

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-49688-2022(O&M)
Date of decision : 21.12.2022

Birender @ Binder

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Diwan S.Adlakha, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

Mr.Akashdeep Singh, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.324 dated 17.08.2022 registered under Sections 306, 34 IPC (Sections 201, 323, 324, 341 and 506 IPC added later on) at Police Station Madlauda, District Panipat.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 25.08.2022 and the investigation is complete and the challan has already been presented and there are 21 witnesses, out of which, none have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that in the present case, the incident with respect to the alleged beating had taken place on 14.08.2022 whereas the deceased had allegedly committed suicide on 16.08.2022. Moreover, even in case the

incidents of 14.08.2022 and 16.08.2022 are taken on face value, it will be highly debatable as to whether offence under Section 306 IPC would be attracted in the present case or not. Learned counsel for the petitioner has relied upon the judgment of a coordinate Bench of this Court in ***Satwinder Singh vs. Sukhbir Singh*** reported as **2009 (16) RCR (Criminal) 116** in support of his arguments to the effect that in case, a person commits suicide on account of threats received by him of being involved in a criminal case by the accused person then the same would not amount to abetment so as to constitute the offence under Section 306 IPC. Further reliance has been placed upon a judgment of a coordinate Bench of this Court titled as “***State of Punjab Vs. Kamaljit Kaur alias Bholi and another***”, reported as **2008 (2) R.C.R. (Criminal) 562**, and the judgment of a coordinate Bench of this Court dated 06.02.2012 passed in ***CRA-S-1802-SB-2002***, titled as “***Maya Vs. State of Punjab***”.

Learned State counsel as well as learned counsel for the complainant have opposed the present petition for regular bail and have submitted that in the present case on 16.08.2022, when the complainant was returning after seeing the buffaloes, at that time all the accused persons, including the present petitioner, conspired with each other to falsely implicate the deceased in a case of outraging the modesty of a woman and it is submitted that on the basis of statement of Santosh i.e., the mother of the petitioner, the FIR no.319 dated 15.08.2022 had been registered under Sections 323, 354, 506 IPC at Police Station Matlauda, Panipat, against the deceased and in the said case, proceedings under Section 182 IPC have been initiated and thus, on account of the mental stress caused, the deceased committed suicide. It is further submitted that a perusal of the FIR would

show that there is a video clip which had been recorded by the deceased in which, he has implicated the present petitioner alongwith other co-accused persons.

Learned counsel for the petitioner, in rebuttal, has submitted that the said FIR dated 15.08.2022 has not been registered on the statement of the present petitioner but on the statement of Santosh i.e., the mother of the petitioner and mere institution of the FIR cannot come within the meaning of abetment so as to constitute the offence under Section 306 IPC read with Section 107 IPC.

This Court has heard learned counsel for the parties and has perused the paper book.

A coordinate Bench of this Court in the case of ***Satwinder Singh's case (supra)*** has held as under:-

“4. The sum and substance of the statements of the witnesses referred to above and the note (Exhibit PB) is that the deceased was not having good working relations with the respondent. Deceased was subordinate to the respondent. On account of threatening phone calls and out of fear that respondent may involve the deceased in a criminal case, he committed suicide.

5. The evidence led by the prosecution per se cannot establish offence punishable under [Section 306](#) IPC because it provides for abetment of suicide. Abetment has been defined under [section 107](#) IPC, that is, a person abets the doing of a thing who, firstly, instigates any person to do a thing, or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if the act of illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. None of the ingredients of abetment is there even if the evidence adduced by the prosecution is believed in toto.

6. [In Mahendra Singh v. State of M.P.](#), 1995 Supp. (3) SCC 731, the appellant was charged for an offence under [Section 306](#) I.P.C. basically based upon the dying declaration of the deceased, which

read as under :

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

11. This court, considering the definition of 'abetment' under [Section 107](#) I.P.C. and found that the charge and conviction of the appellant for an offence under [Section 306](#) is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of the abetment are attracted on the statement of the deceased."

7. In a recent judgment, [Kishori Lal vs. State of M.P.](#) 2007(3) RCR (Criminal) 385, Hon'ble Supreme Court relying upon Mahendra Singh's case (supra) held that merely on the allegation of harassment conviction in terms of [Section 306](#) IPC is not sustainable.

8. Viewed from the circumstances, this Court is of the view that the ingredients of 'Abetment' are totally absent in the instant case for an offence under [Section 306](#) IPC. This being so, there is no infirmity in the impugned judgment on any count which would call for the interference of this Court while exercising its revisional jurisdiction.

9. The revision petition is, therefore, dismissed."

A perusal of the above judgment would show that the allegation against the accused therein was that threatening phone calls were made and out of fear that the accused may involve the deceased in a false criminal case, the deceased committed suicide. A coordinate Bench of this Court after considering the said allegations and also the law laid down in various judgments observed that the ingredients of abetment were absent in the said case so as to constitute the offence under Section 306 IPC.

A co-ordinate Bench of this Court in **Kamaljit Kaur's** case

(supra) had observed as under:-

“1. The present revision petition is directed by the State against the discharge of Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala, accused. They were facing trial in case FIR No. 108 dated 31-12-1994 registered at Police Station Nawanshahr under Section 306, IPC. It is stated that Paramjit Singh son of Darshan Singh Hira and his son Amritpal alias Lovely committed suicide and left a suicide note to the effect that his wife Kamaljit Kaur alias Bholi is a woman of bad character. He is fed up with her. Therefore, he along with his son Lovely Amritpal Singh is committing suicide. It is further stated that his wife has illicit relations with three persons namely, Palli of Commando Force, Ludhiana, Kala residing opposite to their house and Ujjal Singh, her real uncle. In the suicide note, he has expressed that in these black days, such bad women are living in the Society. It is further stated that his wife Bholi is a lady of loose character. It is further stated that since Palli has come as a tenant in the house, Bholi has become lady of loose character. It is further stated that Kala had noticed Bholi in objectionable manner with Kala. He wanted in suicide note that if law contemplates action against wedded woman, the law should take its course.

2. On 27.8.1994 at 3.00 p.m. dead bodies of young unknown person aged about 30 years and a child aged about 5- 6 years were found near the maize field. These dead bodies were of Paramjit Singh and his son Amritpal alias Lovely. Postmortem was conducted Visceras were sent to the Chemical Examiner. The Chemical Examiner found the cause of death to be Aluminum Phosphide. Suicide note was found from the pocket of Paramjit Singh. After completion of investigation, challan was submitted against Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala. The name of Ujjal Singh was placed in column No. 2. Learned Sessions Judge, Jalandhar, while discharging the respondents had observed as under:-

“It cannot be disputed that charge can be framed merely on strong suspicion and the evidence at the time of framing charge is not to be considered meticulously. But I am of the considered opinion that the circumstances of the case are such as, possibly, it cannot be stated that a prima facie case is made out against the accused within the meaning of

Section 306 of the Code. Abetment of suicide is punishable Under Section 306 of the Code. Section 107 of the Code defines abetment as under:

107. A person abets the doing of a thing, who first, instigates any person to do that thing; or Secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly, intentionally incite, by any act or illegal omission, the doing of that thing.

Explanation I. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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*For arguments sake, if it may be taken that the wife is a woman of easy virtue, even then, it cannot be stated if she had instigated or had aided the commission of suicide. The learned P.P. for the State has not been able to satisfy as to in which manner the commission of suicide has been instigated or aided by the accused. The husband might be feeling harassed or mentally disturbed with the alleged illicit relations of his wife but harassment and the mental disturbance do not constitute the offence of abetment. It looks that the deceased husband was unable to control his wife and he out of frustration has not only committed suicide but has also snuffed the life of his son. The authority Charabhushan Bhimraj Bhushanwar and Ors. (supra) is hardly of any help to the prosecution, I am of the firm view that from the facts of the case no prima facie case is made out against the accused. Though no direct authority is available pertaining to such like facts yet with advantage reference can be made to **Shri Ram v. the State of U.P.** , **Balbir Singh v. The State of Punjab** 1987 (1) Crimes 76; **Wazir Chand v. The State of Haryana** 1989 (1) Crimes 173 : 1989 CriLJ 809; **State of Haryana v. Babu Ram** 1992 (1) Criminal Courts judgments 68 and **Deepak v. State of M.P.** 1984 Cri LJ 767".*

*3. I have perused the order passed by learned Sessions Judge Jalandhar. In Sanju alias **Sanjay Singh Sengar v. State of Madhya Pradesh** 2002 (Supp) 1 JT 248, it was held that the word 'instigate' denotes incitement or urging to do some drastic or*

unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation.

4. The conduct of wife of the deceased though may be conduct of bad wife but was not for the purpose to incite the deceased to commit suicide.

*It was held by a Division Bench of this Court in **Raj Kumar v.***

***State of Punjab 1983 (1) CLR 660** as under:*

“12. Expression 'instigate' in the Concise Oxford Dictionary is defined as 'urge on incite, bring about by persuasion and in Webster, it has been defined as 'urge forward, provoke with synonyms of stimulate, urge, spur, provide tempt, incite, impel, encourage, animate. The word 'instigate' in common parlance would mean to go, to urge forward or to provoke incite or encourage to do an act.”

5. Every husband or wife may not be living a life of virtue. The conduct of any spouse, if is not upto the expectations of other spouse, and result into commission of suicide by another abetment of suicide cannot be imputed to the other spouse.”

A perusal of the above judgment would show that the said case was also a case under Section 306 of IPC in which two persons i.e., husband of the accused therein and their son had committed suicide and there was a suicide note to the effect that Kamaljit Kaur, wife of the deceased Darshan Singh was a lady of bad character and had illicit relations with three persons and she was caught in an objectionable manner with one of the said three persons and in the suicide note, it was specifically stated that action should be taken against such a woman. Challan was filed against the said lady as well as her paramour. After considering the provisions of Sections 306 and 107 of IPC, it was observed by the Sessions Court as well as by this Court that even in a case where the wife is alleged of being a woman of easy virtue, then also, it cannot be said that she has instigated or aided the commission of suicide and had observed that in case the husband was feeling harassed or mentally disturbed due to the alleged illicit relationship of his wife, then the

harassment and mental disturbance would not constitute the offence of abetment. It was further observed that the word 'instigate' denotes incitement or urging to do some drastic or unadvisable action and the presence of *mens rea* is a necessary concomitant of instigation. A person may be a bad wife but her conduct was not for the purpose to incite the deceased to commit suicide and, thus, abetment of suicide in such a case cannot be inferred and, thus, the wife in the above-said case was discharged. To a similar effect is the judgment dated 06.12.2012 passed by a coordinate Bench of this Court in the case of *Maya Vs. State of Punjab* (supra), in which the wife and the paramour, both were tried and convicted thereupon, but were ultimately acquitted.

In the present case, the petitioner has been in custody since 25.08.2022 and the investigation is complete and the challan has already been presented and there are 21 witnesses, out of which, none have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. The question as to whether on the basis of the incidents which took place on 14.08.2022 and 16.08.2022 as per the allegations levelled in the FIR, the offence under Section 306 IPC would be attracted in the present case or not, would be finally adjudicated during the course of trial.

Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the

petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

December 21, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No