

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(212)

CRM-M-44702-2019 (O&M)
Date of decision: - 10.05.2022

Rajesh @ Leelu

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sunil Chaudhary, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Mr. Mahavir Singh, Advocate
for the complainant.

VIKAS BAHL, J. (ORAL)

CRM-36645-2021

Present application has been filed under Section 428 Cr.P.C.
for placing on record certain documents as Annexures A-1 to A-7.

Application is allowed, as prayed for. The documents
(Annexures A-1 to A-7) are taken on record, subject to all just exceptions.

CRM-M-44702-2019

This is a first bail application under Section 439 Cr.P.C. for
grant of regular bail to the petitioner in FIR No.416 dated 02.09.2018
registered under Section 306 IPC at Police Station Beri, District Jhajjar.

Learned counsel for the petitioner has submitted that in the present case, the petitioner was arrested on 03.09.2018 and was granted interim bail by a Co-ordinate Bench of this Court on 14.08.2020, after spending about 1 year and 11 months in custody. It is further submitted that in the present case, the challan has been presented and out of 21 prosecution witnesses, only 4 have been examined, thus, the trial is likely to take time. It is also submitted that a perusal of the FIR would show that *prima facie* the offence under Section 306 IPC is not made out. It is also submitted that on 29.08.2018 in fact, a minor scuffle had taken place, in which, the deceased and his two sons had attacked the present petitioner and on account of the same, petitioner had got an FIR bearing No.412 dated 30.08.2018, under Sections 323, 452, 506 and 34 IPC, registered against the deceased and his two sons. It is further submitted that the petitioner is not involved in any other case. Further, reliance has been placed upon a judgment of the Hon'ble Supreme Court of India in ***Special Leave to Appeal (Crl.) no.7284 of 2017*** titled as **“Shabbir Hussain vs. The State of Madhya Pradesh & Ors.”** decided on 26.07.2021 has held as under:-

“On 10.09.2014, due to certain matrimonial dispute, Roshan Bee, wife of deceased Firoz Khan moved to her parental home. On 22.09.2014, Firoz Khan committed suicide in his house by consuming poison and also left four suicide notes.

Shabbir Hussain, brother of the deceased – Firoz Khan, preferred complaint i.e. Crime No. 1403/2014, which was registered against respondent Nos.2 to 4 under Section 306/34 IPC. After investigation, chargesheet was filed against respondent Nos.2 to 4 and Trial commenced against respondent Nos.2 to 4. Respondent Nos.2 to 4 preferred Criminal Revision No.725/2016 under Section 397/401

Cr.P.C. before the High Court of Madhya Pradesh at Indore. The High Court allowed the Criminal Revision filed by respondent Nos.2 to 4, aggrieved by which, the petitioner has preferred this special leave petition.

Learned counsel for the petitioner submitted that the High Court committed an error in allowing the Criminal Revision, especially after 10 witnesses had already been examined. He referred to the suicide notes that were written by the deceased Firoz Khan, to support his submissions that Firoz was harassed by respondent Nos.2 to 4, due to which he took his own life. He argued that abetment of the offence of suicide by respondent Nos.2 to 4 is prima facie made out as the harassment by respondent Nos.2 to 4 facilitated the act of suicide by the deceased.

In order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC [Amalendu Pal v. State of West Bengal(2010) 1 SCC 707].

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi)(2009) 16 SCC 605].

In the instant case, the allegations against Respondent Nos. 2 and 4 is that they harassed the deceased. There is no other material on record which indicates abetment. The High court did not commit any error in allowing the Criminal Revision.

Therefore, special leave petition is dismissed.

Pending applications, if any, also stand disposed of."

Reliance is also placed upon a judgment of a Co-ordinate

Bench of this Court in "**State of Punjab vs. Kamaljit Kaur alias Bholi and another**", reported as **2008(2) RCR (Criminal) 562** wherein it has

been held 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., Blabir 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.”

Further, reliance has been placed upon a judgment of the Hon'ble Supreme Court of India in a case titled as **“Gangula Mohan Reddy vs. State of Andhra Pradesh”** reported as (2010) 1 Supreme Court Cases 750 has held as under:-

“3. The brief facts which are relevant to dispose of this appeal are recapitulated as under: according to the case of the prosecution, the appellant, who is an agriculturist had harassed his agriculture labour (servant) deceased Ramulu by levelling the allegation that he had committed theft of some gold ornaments two days prior to his death. It was also alleged that the appellant had demanded Rs.7,000/- from the deceased which was given in advance to him at the time when he was kept in employment. The prosecution further alleged that the deceased Ramulu could not bear the harassment meted out to him and

he committed suicide by consuming pesticides.

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17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

Learned State counsel as well as learned counsel for the complainant have opposed the present petition for regular bail and have submitted that it is on account of the fact that the petitioner used to harass the deceased repeatedly and had beaten him up on 29.08.2018 and further on 30.08.2018, the petitioner even hurled abused on the deceased, that the deceased committed suicide.

This Court has heard learned counsel for the parties and has gone through the paper-book.

The petitioner had been arrested on 03.09.2018 and was granted an interim bail by a Co-ordinate Bench of this Court on 14.08.2020, after custody period of about 1 year and 11 months. Moreover, the challan in the present case has already been presented and out of total 21 prosecution witnesses, only 4 have been examined, thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case. The petitioner is stated to never have misused the concession of interim bail granted by the Co-ordinate Bench of this Court, vide order dated 14.08.2020. It is the case of the petitioner that there was

a minor scuffle, which had taken place, on account of which, the petitioner himself suffered injuries and regarding the same, above-said FIR No.412 dated 30.08.2018 had been registered against the deceased and his two sons. The question whether the allegations as levelled in the present FIR, would constitute an offence under Section 306 IPC, is a debatable issue, which would be finally adjudicated during the course of trial.

Keeping in view the above-said facts and circumstances and also, the ratio of law laid down by the Hon'ble Supreme Court and co-ordinate Benches of this Court, 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.

It is however made clear that in case the petitioner influences or threatens any witness, then it would be open to the State to move an application for cancellation of bail of the petitioner.

However, 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.

May 10, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes