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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19228-2023
DECIDED ON: 18.05.2023

NEHA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S. Narula, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court has been invoked under Section 438 of Cr.P.C., for grant of anticipatory bail in FIR No.250 dated 30.03.2023, under Sections 306, 120-B of IPC, registered at Police Station City Karnal, Karnal Haryana.

The contents of FIR reads as under:-

“To SHO, Sadar Bazar, Karnal. Sir, it is requested that I, mangat s/o Sh. Lalit Kumar, am a resident of House No.-1832, Drabi Line, Karnal, Sadar Bazar, Karnal. We are four brothers. My younger brother is Hunny Passi who is about 30 years of age and was employed in Godown shop no. 44, Old Anaaj Mandi owned by one Brij Kishore, who runs a franchisee of Mother Dairy ice-cream. On 29.03.2023, my brother had gone to the above mentioned Godown for work and he was upset for the last many days. Today on 30.03.2023, we came to know that my brother has committed suicide by hanging himself in the above mentioned

Godown. My brother did not return home last night. We then reached the spot. In our presence, the FSL team recovered a suicide note from my brother's pocket. Recently, marriage of my brother Hunny Passi was fixed with Neha d/o Vijay Kumar r/o Ambedkar Nagar, Sadar Bazar, Karnal and they were in a relationship from the last 15 years. My brother Hunny had purchased all marriage articles for Neha such as furniture, jewellery with his own money. When the time of marriage approached, Neha and her family members broke their marriage due to which he started remaining mentally upset. Even after breaking the relationship, Neha continued to blackmail Hunny for money and Hunny told about this to his close friends. Hunny has committed suicide because of his being mentally upset and Hunny had disclosed all these things to his friends. We want to take legal action against Neha and her family members. Legal action may kindly be taken.”

Learned counsel for the petitioner contends that there is no direct proximity of any allegation or abetment immediate with the commissioning of suicide by the deceased Hunny on the part of petitioner Neha. He has drawn attention of this Court to the suicide notes dated 30.03.2023 and 04.04.2023 (Annexures R-1 & R-2 respectively), as has been depicted in the suicide notes the last incident as per learned counsel for the petitioner whatsoever from the version of FIR relates to a week prior to the commissioning of offence and further contends that it is the petitioner, who has been paying money on each and every occasion as and when demanded by the deceased, as has been reflected in the statement of accounts (Annexures P-2 & P-3 respectively) pertaining to the Canara Bank and State Bank of India for the period from 01.12.2021 to 01.01.2022.

Notice of motion.

On the asking of Court, Mr. Gagandeep Singh Chhina, AAG, Haryana, accepts notice on behalf of respondent-State.

Mr. Rajesh Duhan, Advocate has put in appearance on behalf of the complainant, who stated the manner of humiliation and torture meted out to the deceased at the hands of petitioner, wherein both were engaged after having been a courtship relationship for almost 6 years, which was broken all of a sudden on a very unreasonable demand of petitioner namely Neha. Instead of digging up the piecemeal statement, this Court is of the considered view that whole of the suicide note should be read in totality collectively, which is reproduced hereinbelow:-

“Aarti Bijoria Garg and Neha Bijoria are responsible of my death. Aarti had taken my one video by fraud in January 2023 and thereafter, she started blackmailing me. On 3rd Feb. and 4th Feb. Aarti made last call to me and demanded Rs.1.00,000/-. Aarti engaged a boy who followed me to my factory and demanded money from me. I paid him Rs.1,00,000/- and after three days, the said boy again demanded money from me. I fed up for whole day. Meanwhile Neha had started blackmailing me for money and she called me and threatened by calling the police or someone else which is clear from the recording. I deposited Rs.4.0 lac in the account of Neha and prepared FD of the said amount in order to get her job and on that account she started blackmailing me. I got prepared necklace for Neha after selling gold of my father and Bhabhi for her marriage which belongs to me which she claimed to be of her own. Now she is pressurizing me to arrange Rs.8,50,000/- which is in the recording and she is blackmailing me, I came to know. If I will pay money to them then they would have harassed him. Therefore, I am committing suicide by their harassment. Aarti Bijoria, Mobile No.70155 93671, Neha Mob.90680 82556. There is a proof in my phone on

Photo Locker, which password is 2222. The password of my phone is 2222. I am sending two recordings to my friend family (Hunny).

I request to IBN 24 and Karnal Breaking News that it should be published on social sites so that such type of incident be not occurred with any boy. Neha Bijoria and Aarti Bijoria are responsible for my death. I and Neha were in relationship for six years. All the expenses for her outing were borne by me. When Neha was not in job, I prepared FD of Rs.4.0 lac in her name of my money because her father had prepared FD of Rs.5.00 lac of his children, but not in her name. I opened her account in Syndicate Bank, Near SD Model School, where i deposited the amount in her account but she denied the same in recording. We used to go hotel and we both consumed liquor there. During the period of six years, Neha became pregnant and same was terminated by consuming pills. Neha asked me for performing marriage and I agreed for the same and asked her when it to be performed, but her father did not agree to it. After three years Neha got a job in LIC and after that she asked me to built a separate house then she will be performed marriage. I constructed a house from the saving of myself, my brother and father. Neha asked her family members for marriage and I asked her Bhabhi for their marriage. When my engagement was performed with Neha then she put a demand that she will remain outside during the night after the marriage. I flatly refused to Neha and at this, there was an altercation took place between us and the engagement was broken on 4 Feb. as I do not want to marry with her. After 30 minutes phone of Neha came to me and told that I had insulted her now she will not spare me. I alongwith Neha went to Gopi Nath Hotel in November and December 2022. Neha asked me to bring the drink. I had taken heavy peg of drink, but Neha had taken small peg of drink and under influence of liquor Neha had prepared my nude video while I was lying on bed and going to Washroom. I did not ask her

about it as we normally used to prepare video and pics. She threatened me by viraling the said video and demanded Rs.1.50 Lacs for not viral the same. I sent call message on 5th Feb. to Neha for deleting the video and I will pay the money. Thereafter Neha said that she would commit suicide by involving his family members otherwise he should pay. I paid Rs.50,000/-, Rs.50,000/- total Rs.1.00 lac within a month but she had not taken the money herself and same were given to her Bhabhi Aarti on the highway. It is surprised to know that Neha and her Bhabhi were not calling with one another, but they were in the contact of third person. Thereafter they demanded Rs.9,70,000/- which I had given from releasing my committee but Neha pressurized me to pay Rs.8,50,000/- from anyway. I talked to Neha on 15/3 through phone then she stated that you did not call message and you give money by selling your house. Video had viraled to some third person, I understood the same but their lust will not stop here. Neha told my Bhabhi on phone that I sent message to her and understand me. They blamed upon me, but I could not tell this to my family members. I knew that no would believe me. Therefore, I am committing suicide of their harassment. No decision should be taken on stack of money. Such persons be punished so that future life of anyone will not be spoiled.

Recording in proof which I am sending to Vivek Mobile No.98969 47871 and Roshan Mobile No.74043 91274. Neha had taken from me Kara of Gold Rs.25,000/-, chain of gold Rs.25,000/-, ring of gold Rs.25,000/-, Delhi Study time Rs.30,000/-, one gold ring and proof thereof are in the phone and Preet Phoghat will provide the same. Record will be available at Divine Star Dhaba, Nilokheri and Gopi Nath Hotel, Dayal Singh College Karnal. The money and gold given by me to Neha she has claimed to be of herself. One person of staff was sent to me by Neha, who told me yesterday that you should arrange money otherwise get out, which is in the recording. The said person was telling me staff member. No compromise will be made with such persons except

only punishment. Hunny. I wrote this note on 17/3 at 8.30 in full senses in front of my factory camera. This girl be not played with the life of any person and inquiry be conducted in this regard.”

Learned State counsel on instructions from ASI Mukesh Kumar in addition to the submissions made by learned counsel for the complainant submits that the suicide note (Annexure R-2) was recovered from a gutter, which was apparently concealed by none other than but at the hands of petitioner and her family members.

The most pertinent aspect evident from the said suicide note is that on 15.03.2023, there is a telephonic conversation between the deceased and the petitioner, wherein another demand of money was the reason for dispute between both of them, but the most glaring aspect as has been narrated referring to an incident of November and December, 2022, wherein it has been alleged by the deceased in the suicide note that I was taken by Neha to a hotel, from where she ordered for drink and I had taken heavy peg of drink, whereas, Neha had taken small peg of drink and under the influence of liquor, Neha had prepared my nude video, while I was lying on bed and going to washroom and on that account also started blackmailing him with the threat of making viral all those videos and pictures and on grab of that blackmailing, she continuously had been demanding money, out of which on various occasions, Rs. 50,000/- twice and subsequently Rs. 9,70,000/- was demanded and thereafter, lastly on 15.03.2023, Rs. 8,50,000/- was demanded as per the suicide note, which makes out a case of direct allegations against the petitioner and consistent demand for money as well as finally breaking the engagement, after having prepared nude videos, which by all means are sufficient to leave an impression for humiliation and mental torture for an

individual.

It is on that account, it has been alleged that the deceased was continuously under constant, torture and harassment at the hands of petitioner and, therefore, she is not entitled to any concession of anticipatory bail before this Court.

The vernacular also reflects that the same has been retrieved after pasting the pieces of the concluding part of the suicide note, which is conclusively stated by the deceased, that money and gold was given by him to Neha as has been claimed to be of herself, staff was being sent by Neha to the deceased for arranging money and on that account recordings have been provided to the Investigating Agency. The last desire put forth in the suicide note by the deceased is "No compromise will be made with such persons except only punishment. Signed Hunny. I wrote this note on 17/03 at 8.30 in full senses in front of my factory camera. This girl be not played with the life of any person and inquiry be conducted in this regard."

Having heard learned counsel for the respective parties.

Section 306 of Indian Penal Code reads as under :

"306. Abetment of suicide

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

From a bare reading of the provision, it is clear that to constitute an offence under Section 306 of the Indian Penal Code, the prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence under Section 306 IPC would stand only if there is an "abetment" for the commission of the crime.

The parameters of "abetment" have been stated in Section 107 of the Indian Penal Code, which defines abetment of a thing as follows :

"107. Abetment of a thing

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 aids, by any act or illegal omission, the doing of that thing.

Explanation 1- 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."

As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, 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 aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 IPC states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the Indian Penal Code.

Therefore, the question for consideration is whether the allegations levelled against the appellant in the FIR and the material collected during the course of investigations, would attract any one of the ingredients of Section 107 Indian Penal Code ?

As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the Indian Penal Code. The meaning of the said word was considered by this Court in ***Ramesh Kumar v. State of Chhattisgarh, 2001(4) RCR (Criminal) 537 : (2001)9 SCC 618***. Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. *Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred.* A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying

somebody until he reacts". Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in *Ramesh Kumar's case (supra)*, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.

Further reliance can be placed upon judgement rendered by Apex Court in *Marino Anto Bruno and Anr. Versus The Inspector of Police criminal appeal no. 1628 of 2022* wherein this Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other

alternative but to put an end to her life.

It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

After examining the FIR and suicide note mechanically, it is evident that there was persistent and consistent act of humiliation and torture being caused to the deceased prima facie, as there is a specific role attributed to the petitioner with regard to demand of money and blackmailing the deceased on account of viraling the obscene video of the deceased. Moreover the custodial interrogation of the petitioner is required to collect the material evidence, as has been pressed hard by learned State counsel pertaining to the accounts of the petitioner including mobile phone, to go to the root, which may further enable the Investigating Agency to unearth the conversation between two, including the chat, which will ultimately help the Investigating Agency to reach to a logical conclusion.

On that account, this Court is not convinced with the arguments raised by counsel for the petitioner, wherein prima facie offence under Section 306 IPC seems to have been committed by the petitioner. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the preson to commit suicide. Therefore, in such a case, inference has to be drawn from the circumstances and it is to be determined whether circumstances had such which in fact had created the

situation that a person felt totally frustrated and committed suicide.

In view of the discussions made hereinabove, this Court is of the firm view that the petitioner does not deserve the concession of pre-arrest bail, as her custodial interrogation is necessary to unearth all the ramifications involved in the present case.

Dismissed.

(SANDEEP MOUDGIL)
JUDGE

18.05.2023

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>