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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M No.255 of 2022 (O&M)
Date of Decision : 06.11.2023**

Goldy @ Demant Rali

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.S. Jagpal, Advocate for the petitioner.

Mr. M.S. Tiwana, AAG Punjab.

Mr. Sandeep Sharma, Advocate for the complainant.

ALKA SARIN, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.279 dated 11.10.2021 under Sections 306, 34 of the Indian Penal Code, 1860 registered at Police Station Phillaur, District Jalandhar.
2. Learned counsel for the petitioner would contend that the petitioner and the deceased were friends and the said fact is also discernible from the chats between the deceased and the petitioner as appended with the petition as Annexure P-2. Learned counsel for the petitioner would further contend that the ingredients of abetment are not made out in the present case as there is nothing on the record to show that there was any instigation on

the part of the petitioner as contemplated under Section 107 IPC. It is further the contention of learned counsel that the petitioner has been in custody for a period of 02 years and 23 days and further that there is no other case pending against him.

3. Learned counsel for the State has filed the custody certificate and as per custody certificate the petitioner has been in custody for a period of 02 years and 23 days and that there is no other case pending against him. Learned counsel for the State on instructions from ASI Balbir Chand has pointed out that out of 16 prosecution witnesses only 05 witnesses have been examined. It has further been pointed out that the complainant and the other material witnesses stand examined.

4. Learned counsel for the complainant has vehemently contended that the deceased was being harassed by the petitioner which led her to commit suicide and hence this is not a fit case for grant of regular bail.

5. Heard.

6. Section 107 IPC reads as under :

“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.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

7. In the present case, learned counsel for the petitioner has contended that the ingredients of Section 107 IPC are not made out in the present case. There is no prima facie material on the record to show that there was any instigation on the part of the petitioner for the deceased to commit suicide. Merely because they were friends or had been exchanging messages would not amount to instigation as contemplated under Section 107 IPC.

8. Hon’ble Supreme Court in the case of **V.P Singh Etc. Vs. The State of Punjab & Ors. [2023 (1) RCR (Criminal) 348]** has held as under :

“13. Learned senior counsel for the appellants has relied inter alia on the judgment of this Court in "S. S. Chheena v. Vijay Kumar Mahajan and Anr." reported as (2010) 12 SCC 190 more specifically paragraph 24 & 25. The Court examined the matter in the conspectus of the prevalent legal position in the Country. While suicide by itself is not an offence but an attempt to suicide is an offence under Section 309 of IPC. The Court thereafter turned to the definition of abetment under Section 107 of IPC which reads as under:-

"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"

14. In the conspectus of the different judgments referred to in that case it was opined that the words "instigation" and "goading" should be intention to provoke, incite or encourage the doing of an act by the latter. While each person's suicidability pattern is different from others,

each person has his own idea of self-esteem and self-respect and therefore it was difficult to lay down any straightjacket formula in dealing with such cases. In this context paragraph 25 reads as under:-

"25. 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 that act must have been intended to push the deceased into such a position that he committed suicide."

16. One other judgment referred before us is in the case of "State of West Bengal v. Indrajit Kundu and Ors." reported as 2019 (10) SCC 188 in which earlier judgment in "Ramesh Kumar v. State of Chhattisgarh" reported as (2001) 9 SCC 618 cited for approval setting out the consideration of the scope of section 306 and ingredients which are essential for abetment as set out in Section 107 IPC. While interpreting the word instigation it was observed in paragraph 20 of Ramesh Kumar Case (Supra) as under:

"20. 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. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

9. As per the custody certificate, the petitioner has been in custody for a period of 02 years and 23 days and that there is no other case pending against him. Out of 16 prosecution witnesses only 05 witnesses stand examined. The trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars any further.

10. In view of the above and without commenting upon the merits of the case, I deem it to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Additional Sessions Judge (Duty) concerned.

11. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

12. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

13. Disposed off. Pending applications, if any, also stand disposed off.

06.11.2023

Yogesh Sharma

(ALKA SARIN)

JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO