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2023:PHHC:137899

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54412-2023
DECIDED ON: 25.10.2023

BALWINDER KAUR @ BINDER KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in FIR 35, dated 30.06.2023, under Sections 306/506 read with Section 34 IPC, 1860, registered at Police Station GRP Sangrur, District Government Railway Police, Sangrur.
2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and complainant has concocted false story in FIR and later on with connivance of the police managed to get offence added under Section 306 of the IPC just to enhance the gravity of the offence. It is further contended that the daughter of the present petitioner is the victim at the hands of deceased Ranjit Singh who tried to outrage the modesty of the daughter of the petitioner.

3. He further argues that even on the bare perusal of the FIR, no offence under Section 306 of the IPC is being made out as the petitioner or her husband never made the deceased who committed suicide and therefore, there is no instigation or provocation on the part of the petitioner or her husband that made the deceased to commit suicide.

4. Per contra learned State counsel vehemently opposes the prayer made in the present petition on the ground that the petitioner and her husband has actively connived with each other in the commissioning of the offence which provoked deceased to commit suicide.

5. Heard learned counsel for the parties.

6. No other argument has been raised by either of the parties.

7. 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."

8. 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.

9. 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."

10. 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.

11. 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 ?

12. 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.

13. 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.

14. 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.

15. 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.

16 After examining the FIR, it is evident that there is a specific role attributed to the petitioner with regard to extending threat to the deceased. It is also apparent that all the accused persons along with the present petitioner visited the house of Ranjit Singh (since deceased) at 10:00 PM armed with 'Gandas/Sticks' to kill Ranjit Singh and after he was not found at his place they raised the slogan that today they will kill Ranjit Singh and proceeded towards his office and due to above stated allegations levelled against the Ranjit Singh (Since deceased) he committed suicide.

17. Moreover the custodial interrogation of the petitioner is required to collect the material evidence, which may further enable the Investigating Agency to unearth the ramifications involved in the present case and that will ultimately help the Investigating Agency to reach to a logical conclusion.

18. 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 person to commit suicide.

19. 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.

20 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 such the same is dismissed being devoid of any merits.

(SANDEEP MOUDGIL)
JUDGE

25.10.2023

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