

2024:PHHC:077726



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-9920-2024 (O&M)
Date of decision: 30.05.2024

Vimal Sharma ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Navneet Singh, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Ritesh Kumar, Advocate
for respondent No.2/complainant.

MANISHA BATRA, J. (Oral)

1. CRM-24533-2024

Allowed as prayed for, subject to all just exceptions.

Amended memo of parties is taken on record.

2. CRM-M-9920-2024 (O&M)

This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 348 dated 30.07.2023, registered under Section 302, 306, 498-A and 120-B of IPC (Section 302 of IPC deleted later on) at Police Station Kheri Pul, District Faridabad.

3. Brief facts of the case relevant for the purpose of disposal of this petition are that on 30.07.2023, on receipt of an information at the Police Station, Rewari regarding dead body of the victim Savita Sharma having been

brought at Asian Hospital, Rewari, a police party headed by ASI Raj Kumar reached there, wherein a written complaint was submitted by the complainant Morpal, father of the victim, alleging therein that she was got married with the petitioner in the year 2011. Soon after the marriage, the petitioner and his family members had started harassing her on account of bringing insufficient dowry. Previously, a complaint in this regard had been filed at Police Station Gokulpuri, Delhi but subsequently the matter was compromised on assurance given by the petitioner and his family members to keep the victim properly. Subsequently, his daughter had started living separately with her husband at Bharat Colony. The petitioner used to harass her even thereafter and physically assaulted her.

4. The complainant further alleged that on 29.07.2023, he had a conversation with the victim at about 11 PM, while she was crying and he pacified her. On 30.07.2023, he called the petitioner on his phone and expressed desire to let him talk with his daughter but he told him that she was sleeping. Then at about 11 PM on the same day, he disclosed that his daughter was in Asian Hospital, Sector 88, Faridabad. He alleged that his daughter had been killed by the petitioner by harassing her on account of demand of dowry. Initially, a case under Section 302 of IPC was registered. Inquest proceedings and postmortem examination of the dead body of the victim were conducted. During investigation, offence under Section 302 of IPC was deleted and offences under Sections 306, 498-A and 120-B of IPC were added. The petitioner was arrested on 15.09.2023. His mobile phone was taken into possession by the police and had been sent DITAC Laboratory, Gurugram for retrieval of data. On 13.09.2023, the complainant also produced the Laptop of

the petitioner, Pen Drive and record of the Whatsapp chat made by the petitioner with one Rakhi Sharma, while alleging that he had an affair with her. It was also revealed that the petitioner had executed a rent agreement with owner of one house bearing number 28-E, 2nd Floor, Fruit Garden, NIT, Faridabad in his name, whereas the above named Rakhi Sharma was staying in the said house and the call detail records also revealed that on 30.07.2023, i.e. on the fateful day, the petitioner had long conversation with Rakhi Sharma.

5. The co-accused Rakhi Sharma was also arrested on 12.05.2024. Investigation has since been completed. The petitioner had filed an application for grant of regular bail before the Court of learned Additional Sessions, Faridabad, which was dismissed, vide order dated 12.01.2024.

6. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. In fact, the victim was suffering from Epilepsy and had been taking medicines regularly for the said disease since the year 2012. No suicide note had been left by her. The petitioner is in custody since 15.09.2023. The ingredients for commission of offence punishable under Section 306 of IPC have not been attracted at all and there is nothing to show that it was the petitioner, who had abetted the suicide by the victim. Rather, her death occurred due to overdose of the medicines for epilepsy as mentioned in the postmortem examination report itself. The trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. Therefore, it is argued that the petition deserves to be allowed.

7. Status report has been filed by the respondent-State, as per which, the petitioner was having extra marital affair with one Rakhi Sharma. The victim was having treatment of epilepsy from Neeraj Clinic, Rishikesh and had been taking medicines for this purpose from the year 2012 to 2022 and record had been collected in this regard. The investigation revealed that she was subjected to cruelty by the petitioner and her in-laws on account of demand of dowry. Learned State counsel, assisted by learned counsel for respondent No. 2/complainant, has drawn the attention of this Court to the analysis report of data obtained from DITAC, as per which, there were several chats between the petitioner and co-accused Rakhi Sharma showing that they wanted to marry each other and live separately. It has also been reported that from these Whatsapp chats, it cannot be denied that the petitioner wanted to get rid of his wife at any cost and the co-accused was supporting him for the same. It is argued that the allegations against the petitioner are very serious and specific in nature. The material witnesses are yet to be examined. There are chances of the petitioner's intimidating them or absconding, if extended benefit of bail. Therefore, it is argued that the petition is liable to be dismissed.

8. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

9. The victim, who was married with the present petitioner from the last 12 years, had died a suicidal death on 30.07.2023. The post-mortem examination report reveals that she was brought dead in the hospital by the present petitioner on 30.07.2023 at 12:41 PM with alleged history of overdose of some drugs taken by her. As per the allegations levelled in the FIR, the

petitioner had been harassing the victim physically as well as mentally and even on 29.07.2023, the victim had made a call to the complainant while crying as some quarrel was taking place between the petitioner and herself and he had pacified her at that time but next day, when he called the petitioner to know about the well being of his daughter, he represented to her that she was sleeping. He raised suspicion that the petitioner after killing his daughter had taken her to hospital. A perusal of the *challan* report filed under Section 173 of Cr.P.C. (Annexure P-2) reveals that during the course of investigation, it was found that the petitioner was having extra marital relations with co-accused Rakhi Sharma. Whatsapp chat record from the mobile phone of the petitioner has been retrieved by the investigating agency.

10. The respondent-State has also placed on record the photocopies of Whatsapp chats, which took place between the petitioner and co-accused Rakhi Sharma on 30.07.2023 since 06:22 AM. On a perusal of the same, it is explicit that as on the previous night, a verbal altercation had taken place between the petitioner and the victim. What shocks the conscience of this Court is the discussion made by them with regard to victim. The relevant portion of the chats, which are though typed in Hindi language but its script is in English, may be reproduced as under :

Time	Message
Messages sent by the petitioner to co-accused Rakhi Sharma:	
10:38 AM	फिर मैंने इसके बाप को कॉल करके बोल दिया कि इसे समझा लो वरना मर मुरा जाएगी मेरे हाथ से ऐसे ऐसे बोल रही ह
10:39 AM	फिर इसने बोला कि छुटकारा चाहिए ना मुझसे तो ये लो गई और बहुत सारी गोलियाँ खा ली
10:41 AM	फिर इसके बाप का फोन आया मेरे पास बोलते की इसने गोलियांखा ली हतबियत ठीक हइसकी मैंने कहा मुझे

	नहीं पता की गोलियाँ खाई हूँ या नहीं लेकिन तुम्हारे घर बात कर रही हूँ
10:45 AM	कल बहुत कलेश किया और मैं रेडी था की मरती हूँ तो मर जाए मैं दिखाने नहीं ले जाऊँगा कहीं
In response to aforesaid messages, co-accused Rakhi Sharma had sent following messages:	
10:46 AM	पता नहीं क्योंकि पड़ गई साली को
11:38 AM	बेटू टच करके तो देख लो जिद्दा हुआ निकल गई
In response to the aforesaid messages of the co-accused, the petitioner is shown to have responded as under :	
11:53	साँस चल रही है बेटू

11. The DITAC report annexed with the status report of the respondent-State also shows that Whatsapp chats between the petitioner and co-accused containing 802 pages had been retrieved. Even extracts of some relevant chats have been annexed with the report, which reveal that the petitioner and co-accused were in relationship since the year 2019. All this prima facie goes to show that the petitioner was having extra marital relationship with co-accused Rakhi Sharma and on the night of 29.07.2023, some altercation had taken place between the victim and the petitioner and shortly thereafter, she had taken overdose of the drugs, which she was admittedly taking for the treatment of seizures. The question is as to whether the act and conduct of the petitioner falls within the provisions of Section 306 of IPC. The well settled proposition of law is that the abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. It also requires an active or direct act which led the victim to commit suicide seeing no option. From the Whatsapp chat record as discussed above, it is clearly reflected that just before the victim took overdose of some drugs on the night of 29.07.2023, the petitioner had made a call to her father telling

him to prevail good sense upon the victim, otherwise she would be killed at his hands and immediately thereafter, the victim had told the petitioner to watch as he wanted to get rid of her. The words uttered by the petitioner to the father of the victim can be stated to be having a proximate link between the death of the victim and abetment of the same. By calling father of the victim, the petitioner certainly instigated and incited the victim to commit some drastic act, which obviously led to the suicidal death of the victim. What also needs to be discussed is that the petitioner, despite being well aware of the victim having taken overdose of her medicines in the previous night i.e. 29.07.2023, kept on waiting for her death on 30.07.2023 and just two hours before taking her to the hospital, he is shown to be saying that he was ready that the victim should die and he would not take her for treatment. His paramour is also shown to be saying that he should touch and check as to whether she is still alive or not?

12. No doubt, it is well settled law that the factum of a husband having extra marital relations does not amount to harassment of such nature, which can be stated to be abetting a wife to commit suicide. However, it cannot be stated to be a case of only extra marital relations having led the victim to commit suicide but from the allegations levelled in the FIR and the record produced by the respondent-State, it is revealed that the petitioner by making a telephonic call to the father of the victim on the night of 29.07.2023 proclaimed that she could die at his hands if he (her father) did not make her understand and his saying so amounts to provoking, inciting and inducing the victim to commit suicide. This fact can also be gathered from the Whatsapp chats made between the petitioner and co-accused Rakhi Sharma, which has

already been discussed above. The possibility of different cause for the suicidal death of the victim is not revealed from any material available on record. Though, at this stage of deciding a bail application, this Court is not supposed to draw any conclusion with regard to the allegations as it is for the trial Court to give conclusive findings thereupon on thorough assessment and evaluation of the evidence to be produced on record before it but the allegations levelled in the FIR coupled with the record produced with the status report are indicative of the fact that the petitioner had been committing such wilful acts such nature as were likely to drive the victim to commit suicide, thereby amounting to committing the act of mental cruelty with her and also he had directly or indirectly instigated/provoked her to end her life and there was proximate link between the death of the victim and such instigation on his part.

13. It will also not be out of place to mention here that as per postmortem report, the victim had been brought dead to the hospital at 12:41 PM, whereas till 11:55 AM, he had been busy in chatting with co-accused Rakhi Sharma, which unfortunately shows that how insensitive the petitioner was qua the victim and rather shows that he practically waited for her to die before she was taken to hospital. Keeping in view the nature of allegations levelled against the petitioner, the quantum of sentence which the conviction may entail and attendant facts and circumstances of the case, I am inclined to hold that the petitioner does not deserve to be given benefit of bail at this stage. Accordingly, the same is dismissed.

14. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

30.05.2024

Waseem Ansari

Whether speaking/reasoned

Whether reportable

(MANISHA BATRA)

JUDGE

Yes

Yes