

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14868-2024

Date of Decision: 03.04.2024

Harvinder Singh

... Petitioner

VS.

State of Punjab

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Prabhjot S Waraich, Advocate and
Dr. Khushbir Kaur, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

1. This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.1 dated 02.01.2024 under Sections 306/377/34 IPC (Sections 323 IPC added later on), registered at Police Station Bhadson, District Patiala.

2. Learned counsel for the petitioner submits that the present FIR has been registered on the basis of statement of complainant Parveen Begam wife of Late Dilbar Khan alleging that her son Dilshad Khan had committed suicide with headgear with the hook of ceiling fan and her brother Aslam Khan saw a video in the mobile phone of her son Dilshad Khan in which her son was uttering the words that Laddi has done all those things with him which a boy do with a girl and chats were also there in the mobile who used to call him at his house as well as at the motor.

3. It is contended that the petitioner – Harvinder Singh, aged about 46 years, is innocent and has not committed any offence and that he has no links with the deceased and belongs to a respectable family. It has been

further argued that Section 377 IPC has been applied with ill intention and he is in custody since 2.1.2024 and is no more required for any purpose.

4. The further arguments raised on behalf of the petitioner is that the petitioner's family members are NRI and well-to-do farmers of the village and the present FIR has been got lodged by the complainant to tarnish their image and to extract money from the petitioner. It is then argued that there is no proof to link the petitioner to the crime inasmuch as the petitioner or petitioner's son were never named in the alleged suicide video and the name "Laddi" was never used for the petitioner by anyone. Reliance has been placed on **Gurbaksh Singh Sibbia vs. State of Punjab (1980) 2 SCC 565 and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav, (2005) 2 SCC 42** to contend that the bail decision must enter the cumulative effect of the variety of circumstances and the persons accused of non-bailable offences are entitled to bail if the prosecution is found to have failed to establish a prima facie case against the accused.

5. Notice of motion.

6. On the asking of the Court, Mr. Prabhdeep Singh Bhandari, AAG Punjab and Mr. Dhanveer Singh, Advocate appearing for the complainant accept notices.

7. Learned State counsel along with learned counsel for the complainant have opposed the grant of concession of regular bail to the petitioner on the ground that petitioner has also played an active role in abetting the deceased to commit the suicide which is a heinous crime. Custody certificate dated 02.04.2024 has been filed which is taken on record, in terms whereof, the petitioner has undergone 2 months and 27 days of

custody and in this case, challan is yet to be filed and no witnesses have been examined till date.

8. Heard learned counsel for the parties and gone through the record.

9. The present case has been registered against the petitioner as well as co-accused on the allegations that the deceased in the video has named the co-accused Laddi who committed carnal intercourse with him and deceased has also named the petitioner as the person who slapped him and in the video, the deceased is stating it as one of the reason to commit suicide. As per prosecution version, the allegations against the petitioner are very serious in nature. So far as the innocence of petitioner is concerned that is a matter of trial and cannot be looked into at this stage. The investigation is still under progress and if the petitioner is allowed regular bail, then there are chances the accused party may exercise undue influence and coerce the witnesses. Moreover, the offence of abetment to suicide under Section 306 of IPC has twin essential ingredients:

A) a person commits suicide.

B) such suicide was abetted by the accused.

10. This offence involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. To hold a person liable for abetting suicide, active role is required which can be described as instigating or aiding in doing thing. 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 IPC though. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. The

Apex Court in the case of **Ramesh Kumar Vs. State of Chhattisgarh AIR 2001 SC 3837** has defined the word 'instigate' to mean as to goad, urge forward, provoke, incite or encourage to do "an act".

11. Abetment is defined 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. 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.”

12. The scope and ambit of Section 107 IPC and its correlation with Section 306 IPC has been discussed repeatedly by the Apex Court in the case of **S.S.Cheena Vs. Vijay Kumar Mahajan and Anr (2010) 12 SCC 190**, it was observed as under:-

“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 the Supreme 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.”

13. At this stage, learned counsel for the petitioner has relied upon **Geo Varghese vs. State of Rajasthan &Anr., 2021 SCC OnLine SC 873** where the Supreme Court held that to constitute an alleged abetment of suicide under Section 306 IPC, there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide.

14. In the present case, the allegation against the petitioner and co-accused are that they were involved in unnatural sex and physical abuse inflicted on a young boy of 11 years, who before committing suicide, got recorded his own version to state that *“Ladi has done things with me that are done by a boy with a girl... his father has slapped me...”*. The video recorded by the deceased before committing suicide is the last statement by the deceased himself which constitutes such actions on the part of the accused which compelled the son of the petitioner to commit suicide. Thus, the reliance placed on the **Geo Varghese** is self-destructive for the petitioner.

15. Dismissed.

16. Needless to say that nothing observed herein shall, in any manner, influence the decision of the trial court.

03.04.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No