



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

CRM-M-27363-2024

DECIDED ON: 28.05.2024

SHIV KUMAR ALIAS RAVI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vivek Singla, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., for grant of anticipatory bail to the petitioner in FIR No.0065, dated 01.05.2024 (Annexure P-1), under Section 306 IPC, registered at Police Station Canal Colony, District Bathinda.

2. Learned counsel for the petitioner contends that as per the version narrated in the FIR, it was a case of love marriage of the deceased son of the complainant namely Suraj Kumar with Anjali daughter of Raj Kumar and once the deceased Suraj Kumar came to know about the illicit relations of his wife Anjali with one Shiv Kumar @ Ravi, who is the present petitioner, living in the neighborhood of deceased Suraj Kumar, he committed suicide. He further contends that on a bare perusal of the contents of the FIR would reveal that the complainant has nowhere alleged in the FIR as to how and in what manner the petitioner was responsible for instigating his son Suraj to commit suicide, therefore, provisions of Section 306 IPC are not attracted in the present case.

3. Notice of motion.

4. On the asking of the Court, Mr. Rajiv Verma, DAG, Punjab accepts notice on behalf of the respondent-State and submits, on instructions from HC Lovejeet Singh, that the petitioner was actively involved in the commissioning of offence with Anjali, wife of the deceased Suraj Kumar who on various occasions used to stop them for having illicit relations but the present petitioner did not mend his ways and being harassed and humiliated, the extreme step of committing suicide has been taken by him. He further refers to order passed by the trial Court while declining the concession of anticipatory bail wherein it has come on record that on account of illicit relationship of the present petitioner with Anjali, wife of the deceased, there use to be a regular scuffle and dispute between them for which the present petitioner is equally responsible.

5. Heard learned counsel for the respective parties.

6. Before advertng to the merits of the case, this Court would find it appropriate to have a glance of Sections 306 & 107 of Indian Penal Code which 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."

7. 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.

8. 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."

9. 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 willful misrepresentation or willful 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.

10. 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?

11. 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.

12. 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 willful omission or conduct which may even be a willful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or willful 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.

13. 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.

14. 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.

15. Coming back to the present case in hand wherein the offences/allegations in the instant FIR are serious in nature as direct allegation of having illicit relationship with the wife of the deceased are coming forth, therefore, I am of the considered rather of the firm view that loopholes and lacuna in the investigation may occur in case the present petitioner is let out on anticipatory bail and although there may not be the instant provocation from the side of the petitioner but the deceased was having persistent harassment at the hands of the present petitioner and, therefore, his custodial interrogation would be required atleast at this stage wherein the confidence in the judicial system would be hampered atleast for the two kids who are aged 6 years and 3 years respectively, if the petitioner let out on bail.

16. In the light of above, the present petition having no merit stands dismissed.

28.05.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No