

2024.PHIC.105108



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

104

**CRM M- 39522 of 2024
Date of Decision: 13.08.2024**

Rakesh Mehra ...Petitioner
Versus
State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. Nandita Verma, Advocate for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023 with a prayer to grant anticipatory bail to him in case FIR No. 0096 dated 20.07.2024 registered at Police Station Cantonment, Police Commissionerate, Amritsar under Sections 108,3(5) of BNSS of 2023.
2. Learned counsel for the petitioner contends that the FIR in the present case was got registered by Tarsem Kumar, father of the deceased by alleging that on 19.07.2024, his elder son Tanish Sachdeva aged 32 years committed suicide by consuming celphos as he was being mentally harassed by the petitioner and his co-accused. Learned counsel for the petitioner further submits that Tanish Sachdeva, since deceased, had borrowed an amount of Rs. 27,44,000/- from the petitioner and other accused and had repaid an amount of Rs. 48,91,000/-, which includes interest. Despite

repayment, the petitioner and others were harassing the deceased and were demanding a sum of Rs. 25,00,000/- more from him. Learned counsel contends that even from the averments made in the FIR, no offence under Section 108, 3(5) of BNS is made out against the present petitioner. The petitioner had not abetted or instigated the deceased in any manner to commit suicide. Learned counsel for the petitioner contends that co-accused Somil Mehra has already been granted the concession of anticipatory bail by this Court. Learned counsel has also placed reliance on the law laid down by the Hon'ble Supreme Court of India in the matter of Mohit Singhal Vs. State of Uttarakhand 2024(1) R.C.R. (Criminal) 72 and C.B.I. Vs. V.C. Shukla 1998 AIR Supreme Court 1406, to contend that the petitioner and his co-accused were availing their legal remedies and had not instigated Tarsem Kumar to commit suicide. Learned counsel for the petitioner further contends that there is no other criminal case against the present petitioner and the petitioner was never involved in any manner in any criminal activity.

3. Notice of motion.

4. On the asking of Court, Mr. I.P.S. Sabharwal, DAG, Punjab accepts notice on behalf of respondent-State.

5. Mr. Umesh Aggarwal, Advocate puts in appearance on behalf of the complainant Anita Choudhary victim/wife of the deceased by filing his memo of appearance, which is taken on record.

Learned counsel for the victim/complainant submits that on

09.04.2024, Tanish Sachdeva, since deceased, has submitted a complaint against the present petitioner and his co-accused. Even, just to harass him and others, Bhanu Chopra @ Sonia, sister-in-law (Bhabi of the petitioner) had further filed a civil suit against Tanish Sachdeva, since deceased and it had become impossible for Tanish Sachdeva to live peacefully and due to the harassment meted out to him, he committed suicide.

7. I have heard learned counsel for the parties and perused the record.

8. In the present case, the petitioner is being prosecuted under Section 306 IPC, which has been reproduced below:-

"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."

9. The Hon'ble Supreme Court in '**Sanju @ Sanjay Singh Sengar v. State of Madhya Pradesh, 2002(2) RCR (Criminal) 687**', has discussed, as to what constitutes abetment and the relevant extract of the said judgment reads as under:-

"13. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go

and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Criminal Procedure Code, 1973 when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Criminal Procedure Code, 1973 is annexed as annexure P -3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 derived the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered

by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below."

[Emphasis supplied]

10. The Hon'ble Supreme Court in '**Netai Dutta v. State of West Bengal, AIR 2005 (SC) 1775**', has held as under:-

"5. There is absolutely no averment in the alleged suicide note that the present appellant had caused any harm to him or was in any way responsible for delay in paying salary to deceased Pranab Kumar Nag. It seems that the deceased was very much dissatisfied with the working conditions at the work place. But, it may also be noticed that the deceased after his transfer in 1999 had never joined the office at 160 B.L. Saha Road, Kolkata and had absented himself for a period of two years and that the suicide took place on 16.2.2001. It cannot be said that the present appellant had in any way instigated the deceased to commit suicide or he was responsible for the suicide of Pranab Kumar Nag. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The parameters of the "abetment" have been stated in Section 107 of the Indian Penal Code. Section 107 says that a person abets the doing of a thing, who instigates any person to do that thing; or 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, or the person should have intentionally aided any act or illegal omission. The explanation to Section 107 says that any willful misrepresentation or willful concealment of a material fact which he is bound to disclose, may also come within the contours of "abetment".

6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.

7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the First Information Report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that is a fit case where the extraordinary power under section 482 of the Code of Criminal

Procedure, 1973 is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal."

[Emphasis supplied]

11. The Hon'ble Supreme Court in '**S.S. Chheena v. Vijay Kumar Mahajan and Another, 2010(4) RCR (Criminal) 66**', has held as under:-

"26. In State of West Bengal v. Orilal Jaiswal, 1994 (3) RCR (Criminal) 186 : (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

27. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) 2009 (4) RCR (Criminal) 196 : 2009 (5) R.A.J. 278 : (2009) 16 SCC 605, had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the

doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

28. 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.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

30. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under section 306 Indian Penal Code against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to

compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under section 306 Indian Penal Code against the appellant is quashed and all proceedings pending against him are also set aside."

[Emphasis supplied]

12. In the present case also, it has been alleged that Tanish Sachdeva, since deceased, has taken a sum of Rs. 27,44,000/- from the petitioner and other co-accused and had repaid an amount of Rs. 48,91,000/-, which included the interest. Still, he was being harassed by the accused and they were demanding a sum of Rs.25,00,000/- more from him. Even if, the allegations levelled by the complainant are taken as true on its face value, it would be a debatable issue as to whether the offence under Section 108, 3(5) of BNSS, 2023 is made out or not. Still further, the prosecution could not bring on record any material to show that there was likelihood of the petitioner fleeing from the process of the justice or repeating the offence or there is no possibility of tampering with the prosecution evidence. Moreover, the similarly placed co-accused Somil Mehra has already been granted the concession of anticipatory bail by this Court vide order dated 06.08.2024 passed in CRM M-38072 of 2024.

13. Without commenting any further on the merits of the case, the present petition is allowed. The petitioner is granted concession of anticipatory bail, subject to the conditions as provided under Section 482(2) of BNSS, 2023. It will be open for the

Investigating Officer to call the petitioner to join investigation, if so required, by issuing a written notice in this regard and he shall abide by the conditions mentioned in Section 482(2) of the BNSS, 2023.

13.08.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No