

2024:PHHC:119021



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CRM M-42593 of 2024  
Date of Decision: 10.09.2024

Malkeet Kaur ...Petitioner  
Versus  
State of Haryana ... Respondent

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

Present : Mr. Karanvir Hooda, Advocate for the petitioner.  
Ms. Sheenu Sura, DAG, Haryana.

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 her in case FIR No. 0066 dated 28.03.2024 under Section 306 IPC registered at Police Station Saha, District Ambala.
2. Learned counsel for the petitioner contends that even though the petitioner was named as an accused in the FIR in the present case, but he had no concern with the allegations levelled by the complainant in the present case. In fact, Avtar Singh, since deceased, was father of daughter-in-law of the present petitioner. The marriage of a son and a daughter of Avtar Singh, since deceased had taken place about one year ago. However, the matrimonial life of both the children of Avtar Singh, since deceased, was disturbed and due to the said reason, his daughter had come back to her parental home,

whereas, the daughter-in-law had left his home and started residing with her parents. Due to this, Avtar Singh, who was an old person, was depressed and was not maintaining proper mental health. He further contends that even, in the suicide note, he had named the parents-in-law of his son as well as parents-in-law of his daughter. Even, he had levelled allegations against several persons without any justification.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by the petitioner on the ground that the petitioner had abetted suicide of Avtar Singh. Even during the course of investigation, the suicide note of Avtar Singh was found and the handwriting in the suicide note had matched with the standard handwriting of Avtar Singh, since deceased. Learned State counsel further submits that the petitioner has been specifically named in the FIR and she is the main accused. Thus, the present petition deserves to be dismissed by this Court.

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. Now advertng to the present case also, Avtar Singh, since deceased, as well as the complainant have levelled allegations against the petitioner, who is the mother-in-law of daughter of Avtar Singh. Still further, even if the allegations levelled by the complainant are taken as true on its face value, it would a debatable issue as to whether the offence under Section 306 IPC is made out or not. Still further, the prosecution could not bring on record any material to show that there was liklihood of the petitioner fleeing from the process of the justice or repeating the offence or there is no possibility tampering with the prosecution evidence.

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 she shall abide by the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.*
- (ii) The petitioner shall surrender her passports, if any, (if already not surrendered), and in case she is not holder of the same, she shall swear an affidavit to that effect.*
- (v) The petitioner shall also file her affidavit before the concerned I.O./Arresting Officer, mentioning her ordinary place of residence and number of mobile phone, which shall be used by her during the pendency of the case. In case of change of place of residence/mobile number, she shall share the details with the concerned Investigating Officer.*
- (vi) In case, the petitioner involves in any other criminal activity, during the pendency of the case, it shall be viewed seriously and the prosecution shall be at liberty to move a petition for cancellation of bail granted to her.*

10.09.2024  
amit rana

(N.S.SHEKHAWAT)  
JUDGE

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