

CRM-M-60989-2023 -1-

222 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-60989-2023
Date of decision: 19th March, 2024

Rashid @ Mohammd Rashid ...Petitioner(s)

Versus

State of Haryana ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Jai Bhagwan Sharma, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Date	Police Station	Section(s)
209	25.04.2023	SGM Nagar, Faridabad, District Faridabad	306 of Indian Penal Code, 1860 (for short 'IPC')

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of written complaint submitted by complainant Samina on 25.04.2023, alleging therein that she was living in a rented accommodation. On the same day, his daughter Sayiba aged about eighteen years had committed suicide by hanging herself her with the help of dupatta to the roof of room of her house.

She alleged that the present petitioner who was working at the same place

where her daughter was working, had been harassing her from some time by exerting pressure upon her to marry with him and had also been compelling her to converse with him on phone. After registration of the FIR, investigation proceedings were conducted. Inquest proceedings and post-mortem examination of the dead body of the victim was conducted. The petitioner was arrested on 26.04.2023. He was interrogated and suffered disclosure statement admitting his involvement in the act of harassing the victim. After completion of necessary investigation and usual formalities, challan was presented and presently, the petitioner is facing trial for commission of aforementioned offences. He had moved applications for grant of bail before the learned trial Court, but the same have been dismissed.

3. 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. No suicide note was left by the victim nor any dying declaration had been made. The ingredients for commission of offence of abetment to commit suicide have not been established at all. There was neither any allegation nor evidence to show that the petitioner had provoked the victim or any such positive action, proximate to the time of occurrence had been done by him which led the victim to commit suicide. Even the fact that it was a case of suicide is debatable due to the reason that the rod with which the dead body of the victim was found to be lying hanging with the help of dupatta was only at the height of 9 feet 5 inches and the height of the chair which was allegedly used by the deceased was 16 inches and it was

doubtful that the death of the victim who was having height 5 feet 2 inches could have occurred by tying dupatta. It is argued that no investigation had, however, been conducted on this point. It is further argued that the investigation has since been completed. Trial has commenced and is likely to take time. No useful purpose would be served by his further detention. Therefore, it is argued that the petition deserves to be allowed.

4. Status report filed has been filed by respondent-State, as per which, there were direct and specific allegations as against the petitioner. The call detail record of the cell phone of the deceased as well as the petitioner were taken which showed exchange of several conversations between them even one day prior to her suicidal death. Report of FSL is awaited. The victim had disclosed about the act and conduct of the petitioner to her mother. There is nothing to show that there would any undue delay in conclusion of the trial. There are chances of petitioner's intimidating the complainant and other material witnesses or fleeing, if extended benefit of bail. Therefore, it is argued that the petitioner does not deserve to be given concession of bail.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. At the outset, it would be proper to address the issue regarding applicability of Section 306 of IPC in the facts of the present case. Section 306 deals with abetment of suicide and Section 107 deals with abetment of a thing. These Sections read as follows:-

“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.

107. Abetment of a thing.—A person abets the doing of a thing, who—

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 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 facilitates the commission thereof, is said to aid the doing of that act.”

7. It is well settled proposition of law that ‘abetment’ involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of abetment of suicide, there must be proof of direct or indirect acts of incitements to the commission of suicide. Merely, on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compel a person to commit suicide, conviction in terms of Section 306 of IPC is not sustainable.

8. It is also well established that in order to bring a case within the purview of Section 306 of IPC, there must be a case of suicide and in the

commission of said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or doing certain acts to facilitate the commission of offence. There must be a proof of direct or indirect acts of incitements to the commission of suicide. It is also required to be seen that as to whether the accused has played an active role in tarnishing the self esteem and self respect of the victim which eventually had drawn her to commit suicide.

9. In view of the abovesaid position of law, it is to be seen as to whether in this case, there was any abetment on the part of the petitioner of commit suicide by the victim. Though, an argument had been raised by learned counsel for the petitioner to the effect that even if it is doubtful that it was a case of suicide or not? However, as per the post-mortem examination report which has been placed on record by the respondent-State, the cause of death is ante mortem hanging in this case. Therefore, *prima facie*, it is to be assumed a case of suicidal death. Annexure R-2 is copy of the call detail record of cell phones of the petitioner and the victim during the months of March and April, 2023 and a perusal of the same reveals that there was regular exchange of calls between them and some times, they had been calling each other, several times a day. The last conversation is shown to have been recorded between them as on 24.04.2023 i.e. just one day before the death of the victim. However, in my opinion, on the basis of this record only, no inference as to the petitioner abetting the death of the victim can be drawn at this stage. In the FIR also, there is no specific allegation qua the manner in which the victim had allegedly been harassed by the present

petitioner. It is simply alleged that the petitioner had been insisting the victim to perform marriage with her and used to say something or the other to her on phone. There is, however, no allegation that there was any instigation, conspiracy or intentional aid on his part as against the victim. It is a debatable question as to whether the petitioner had provoked, incited, urged or pressurized the victim to commit suicide. The evidence is yet to be recorded and it is yet to be considered by the trial Court as to whether the victim who committed suicide was hyper sensitive to ordinary petulance, discord and differences in the normal life. The petitioner is in custody since 26.04.2023. The trial is likely to take time. It is only on the basis of evaluation and assessment of the evidence to be produced on record during the trial that it can finally be decided if the acts allegedly committed by the petitioner bore a directed and proximate nexus to the victim to taking decision to end her life. The well settled proposition of law is that the bail is the rule and jail is an exception, except where there are circumstances suggestive of fleeing from justice or thwarting the Course of justice or creating other troubles by the accused in the shape of repeating offences or intimidating witnesses.

10. Upon a conspectus of the forgoing consideration, this Court is persuaded to hold that further detention of the petitioner would not serve any useful purpose and therefore, he deserves to be released on bail. Accordingly, the petition is allowed, the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

11. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
12. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

19th March, 2024
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No