
(2009) 04 DEL CK 0052

In the Delhi High Court

Case No : Bail Application No. 584 of 2009

Gajender Verma @ Chetan

APPELLANT

Vs

The State (N.C.T. of Delhi)

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Citation : (2009) 7 ILR Delhi 173

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Naresh, M. Sinha and Kuldeep Sharma, for the Appellant; Lovkesh Sawhney, APP, for the Respondent

Judgement

G.S. Sistani, J.—This is an application u/s 439 Cr.P.C. for grant of regular bail in the case FIR No. 184/2008 under Sections 498A/304-B/34 IPC now u/s .498-A/306/34 IPC, P.S. Nand Nagri, Delhi.

2. The marriage between petitioner and the deceased was solemnized on 12.3.2007, soon thereafter on 28.5.2007 a complaint was made by the deceased before the Crime Against Women Cell and another complainant was made on 31.6.2007. Admittedly, parties arrived at an amicable settlement on 26.7.2007. The terms of the settlement were reduced into writing and the deceased is stated to have committed suicide on 7.4.2008. Initially an FIR was registered under Sections 498A/304-B/34 IPC, which was subsequently converted into Sections 306 IPC.

3. Learned Counsel for the petitioner submits that even the basic ingredients of Section 306 IPC have not been made out, as nothing has been placed on record to show that there was any instigation on the part of the petitioner, who is the husband of the deceased. It is also contended that there was no provocation of any kind whatsoever, as the deceased was residing in her parental home and not with her husband. Learned Counsel further submits that there is no possibility of petitioner's tampering with the evidence or influencing the witnesses, which are

close family members of the complainant.

4. Learned APP for the State has vehemently opposed this application and has drawn attention of the Court to the suicide note, which was written by the deceased, wherein she has blamed her husband and her mother-in-law for her death on the ground that they used to beat her and also demanded two lacs from her. He also submits that challan has been filed.

5. I have heard learned Counsel for the parties. In this case soon after the marriage the deceased had gone back to her parental house and continued to stay with them till she committed suicide. Due to intervention of CAW Cell and one person Sh.Vasant Kumar, who was stated to be the uncle of the deceased, parties have arrived at an amicable settlement on 26.7.2007 before the CAW Cell, much prior to her death.

6. Abetment in the commission of suicide is sine qua non for applicability of Section 306 IPC. In a case Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, , contents of suicide note which are noted in para 14 of the judgment reads as under, the Apex Court in Paragraphs 9 to 12 has discussed the law, which also reads as under:

Suicide Note Dainik Bhaskar 581 South Civil Lines Jabalpur.

Agent Name, Sengar New Agency Place, Goehalpur No. of copies, 409 Date
Name of the person who prepared label

Gosalpur Sengar has threatened to report under Dowry demand and threatened to involve family members due to this I am writing in my full senses that Sanjay Sengar is responsible for my death. Sanjay Sengar also Mukraj commander Loota Tha Sanjay Ki.

Sengar New Agency Gosalpur I was threatened therefore I am dying Segar Gosalpur My name Chander Bhushan Singh Gouram Chander Bhushan Singh Gouram Babloo Gouram

In my senses Sengar responsible for my death.

My moti

Darling my moti. You look after my Chukho. My darling Moti Neelam Sengar @ Chander Bhushan Singh Goutam Gandhigram Budhagar.

Sengar is responsible for my death Sanjay Sengar is responsible for my death Sanjay Sengar is responsible for my death Chander Bhushan Singh Goutam Gandhigram Budhagar 9. In 1995 Supp (3) SCC 438 , the appellant during the quarrel is said to have remarked the deceased "to go and die". This Court was of the view that mere words uttered by the accused to the deceased "to go and die" were not even prima facie enough to instigate the deceased to commit suicide.

10. In Mahendra Singh and Another, Gayatribai Vs. State of M.P., , the appellant

was charged for an offence u/s 306 IPC basically based upon the dying declaration of the deceased, which reads as under:

My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.

11. This Court, considering the definition of "abetment" u/s 107 IPC, found that the charge and conviction of the appellant for an offence u/s 306 is not sustainable merely on the allegation of harassment of the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

12. In *Ramesh Kumar v. State of Chhattisgarh* 7 (2001) SLT 356 this Court was considering the charge framed and the conviction for an offence u/s 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set herself on fire. Acquitting the accused this Court said:

A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires 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 for abetting the offence of suicide should be found guilty.

7. In para 15 of the *Sanju* (Supra), the Apex Court has concluded that:

A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not the handiwork of a man with a sound mind and sense. Smt Neelam Sengar, wife of the deceased, made a statement u/s 161 CrPC before the investigation officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26-7-1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25-7-1998. Viewed

from the aforesaid circumstances independently, we are clearly of the view that the ingredients of "abetment" are totally absent in the instant case for an offence u/s 306 IPC. It is in the statement of the wife that the deceased always remained in a drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25-7-1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.

8. Applying the aforesaid principles to the facts of this case and reading of the suicide note does not establish abetment and it may at best amount to harassment.

9. Having regard to the submissions made by learned Counsel for the parties, I consider this is a fit case for grant of bail. Accordingly, petitioner shall be released on bail on his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the trial court, subject to the condition that petitioner will not approach the witnesses.

10. Application stands disposed of.