

(2022) 01 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 2386 Of 2022

Maam Gujjar @ Maam Hussain

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 21-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 107, 306

Code Of Criminal Procedure, 1973 — Section 438(2)

Citation : (2022) 01 P&H CK 0056

Hon'ble Judges : Vikas Bahl, J

Bench : Single Bench

Advocate : Amandeep Singh Manaise, Sukhbeer Singh

Final Decision : Allowed

Judgement

Vikas Bahl, J

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.253 dated 03.11.2020 registered under Section 306 of the

Indian Penal Code, 1860 (hereinafter to be referred as "the IPC") at Police Station City Batala, Police District Batala, District Gurdaspur.

FIR, in the present case, has been registered on the statement of Preet wife of Arun Kumar @ Nannu and the said Arun Kumar @ Nannu is stated

to have committed suicide on 02.11.2020 at about 4.45 pm and as per allegations in the FIR, the said Preet-complainant had submitted that she

suspected that her husband had consumed some poisonous substance because he was upset with the petitioner, who had been threatening to kill the

family of deceased by calling up from his mobile No. i.e. 7504300059 and on account of the said calls, the deceased was very upset for the last 1-2

days preceding the date of complaint and thus, had committed suicide.

Learned counsel for the petitioner has submitted that in the present case, FIR has been registered merely on the basis of suspicion and there is no prima facie material to connect the petitioner with the suicide of the deceased. It is further argued that neither there is any suicide note nor any dying declaration. It is also argued that the deceased had not made any complaint against the petitioner for any such alleged threat. Even the details of the threat have not been mentioned. It is also stated that in fact, SP(D), Batala and DSP City, Batala had conducted enquiry into the said FIR and found that the petitioner has no role to play. It is further argued that mobile number mentioned in the FIR i.e.7504300059 does not even belong to the petitioner. It is also submitted that even in case, the allegations in the FIR are taken on its face value, then also, they would not constitute the offence under Section 306 of the IPC as the ingredients of abetment as laid down in Section 107 of IPC are not attracted and thus, the offence of abetment is not made out against the present petitioner.

Notice of motion.

On advance notice, Mr. Sukhbeer Singh, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of anticipatory bail to the petitioner and has submitted, on instructions from ASI Manjinder Singh, that although, SP(D), Batala and DSP City, Batala had held enquiry in favour of the petitioner but the same is still pending before the SSP, Batala.

This Court has heard the learned counsel for the parties and perused the paper book.

A Coordinate Bench of this Court in State of Punjab Vs. Kamaljit Kaur @ Bholi and another, reported as 2008(2) RCR (Criminal) 562, had observed

as under:-

1. The present revision petition is directed by the State against the discharge of Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala, accused. They were facing trial in case FIR No. 108 dated 31-12-1994 registered at Police Station Nawanshahr under Section 306, IPC. It is stated that Paramjit Singh son of Darshan Singh Hira and his son Amritpal alias Lovely committed suicide and left a suicide note to the effect that his wife Kamaljit Kaur alias Bholi is a woman of bad character. He is fed up with her.

Therefore, he along with his son Lovely Amritpal Singh is committing suicide. It is further stated that his wife has illicit relations with three persons namely, Palli of Commando Force, Ludhiana, Kala residing opposite to their house and Ujjal Singh, her real uncle. In the suicide note, he has expressed that in these black days, such bad women are living in the Society. It is further stated that his wife Bholi is a lady of loose character. It is further stated that since Palli has come as a tenant in the house, Bholi has become lady of loose character. It is further stated that Kala had noticed Bholi in objectionable manner with Kala. He wanted in suicide note that if law contemplates action against wedded woman, the law should take its course.

2. On 27.8.1994 at 3.00 p.m. dead bodies of young unknown person aged about 30 years and a child aged about 5- 6 years were found near the maize

field. These dead bodies were of Paramjit Singh and his son Amritpal alias Lovely. Postmortem was conducted Visceras were sent to the Chemical

Examiner. The Chemical Examiner found the cause of death to be Aluminum Phosphide. Suicide note was found from the pocket of Paramjit Singh.

After completion of investigation, challan was submitted against Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala. The name of Ujjal Singh

was placed in column No. 2. Learned Sessions Judge, Jalandhar, while discharging the respondents had observed as under:-

â??It cannot be disputed that charge can be framed merely on strong suspicion and the evidence at the time of framing charge is not to be considered

meticulously. But I am of the considered opinion that the circumstances of the case are such as, possibly, it cannot be stated that a prima facie case is

made out against the accused within the meaning of Section 306 of the Code. Abetment of suicide is punishable Under Section 306 of the Code.

Section 107 of the Code defines abetment as under:

107. 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 incite, by any act or illegal omission, the doing of that thing.

Explanation I. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntary causes

or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

XXX---XXX---XXX

For arguments sake, if it may be taken that the wife is a woman of easy virtue, even then, it cannot be stated if she had instigated or had aided the

commission of suicide. The learned P.P. for the State has not been able to satisfy as to in which manner the commission of suicide has been instigated

or aided by the accused. The husband might be feeling harassed or mentally disturbed with the alleged illicit relations of his wife but harassment and

the mental disturbance do not constitute the offence of abetment. It looks that the deceased husband was unable to control his wife and he out of

frustration has not only committed suicide but has also snuffed the life of his son. The authority Charabhushan Bhimraj Bhushanwar and Ors. (supra)

is hardly of any help to the prosecution, I am of the firm view that from the facts of the case no prima facie case is made out against the accused.

Though no direct authority is available pertaining to such like facts yet with advantage reference can be made to Shri Ram v. the State of U.P. , Balbir

Singh v. The State of Punjab 1987 (1) Crimes 76; Wazir Chand v. The State of Haryana 1989 (1) Crimes 173 : 1989 CriLJ 809; State of Haryana v.

Babu Ram 1992 (1) Criminal Courts judgments 68 and Deepak v. State of M.P. 1984 Cri LJ 767"".

3. I have perused the order passed by learned Sessions Judge Jalandhar. In Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh 2002 (Supp)

1 JT 248, it was held that 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.

4. The conduct of wife of the deceased though may be conduct of bad wife but was not for the purpose to incite the deceased to commit suicide.

It was held by a Division Bench of this Court in Raj Kumar v. State of Punjab 1983 (1) CLR 660 as under:

â??12. Expression 'instigate' in the Concise Oxford Dictionary is defined as 'urge on incite, bring about by persuasion and in Webster, it has been

defined as 'urge forward, provoke with synonyms of stimulate, urge, spur, provide tempt, incite, impel, encourage, animate. The word 'instigate' in

common parlance would mean to go, to urge forward or to provoke incite or

encourage to do an act.â??

5. Every husband or wife may not be living a life of virtue. The conduct of any spouse, if is not upto the expectations of other spouse, and result into

commission of suicide by another abetment of suicide cannot be imputed to the other spouse.â??

A perusal of the above judgment would show that the said case was also a case under Section 306 of the IPC in which two persons i.e., husband of

the accused therein and their son had committed suicide and there was a suicide note to the effect that Kamaljit Kaur, wife of the deceased Darshan

Singh was a lady of bad character and had illicit relations with three persons and she was caught in an objectionable manner with one of the said three

persons and in the suicide note, it was specifically stated that action should be taken against such a woman. Challan was filed against the said lady as

well as her paramour. After considering the provisions of Sections 306 and 107 of Cr.P.C., it was observed by the Sessions Court as well as by this

Court that even in a case where the wife is alleged of being a woman of easy virtue, then also, it cannot be said that she has instigated or aided the

commission of suicide and had observed that in case the husband was feeling harassed or mentally disturbed due to the alleged illicit relationship of his

wife, then the harassment and mental disturbance would not constitute the offence of abetment. It was further observed that the word

â??instigateâ?? denotes incitement or urging to do some drastic or unadvisable action and the presence of mens rea is a necessary concomitant of

instigation. A person may be a bad wife but her conduct was not for the purpose to incite the deceased to commit suicide and, thus, abetment of

suicide in such a case cannot be inferred and, thus, the wife in the above-said case was discharged. To the similar effect is the judgment dated

06.12.2012 passed by this Court in CRA-S-1802-SB-2002, titled as Maya Vs. State of Punjab, in which the wife and the paramour, both after being

tried and convicted thereupon, were ultimately acquitted.

In the present case, FIR has been registered by the complainant solely on the basis of suspicion. Neither, there is any suicide note nor there is any

dying declaration nor the deceased had made any complaint with respect to any alleged call of threat made by any person. SP (D) Batala and DSP

City Batala had conducted enquiry in the present case and had found that the

petitioner had no role to play in the same. Although, the said enquiry is still pending approval with SSP, Batala, but in view of the same, the custodial interrogation of the petitioner would not be required, moreso, when as per the stand of the petitioner, the mobile No.7504300059, from which the alleged threats were given, does not even belong to the petitioner. The question, as to whether, even in case, the allegations in the FIR are taken on its face value, the offence under Section 306 of IPC is made out or not, would be a matter of trial and keeping in view the judgment of Coordinate Bench of this Court in State of Punjab Vs. Kamaljit Kaur's case (Supra), the present petition is allowed and in the event of arrest, the petitioner is granted the concession of anticipatory bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C. However, the petitioner shall join the investigation as and when called upon to do so. It is made clear, in case, the petitioner fails to join the investigation, then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.