

(2021) 07 OHC CK 0011

In the Orissa High Court

Case No : Anticipatory Bail Application No. 6554 Of 2021

Prof. Dr. Sanjiv Mittal

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 02-07-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 437, 438, 439
Indian Penal Code, 1860 — Section 34, 107, 306

Citation : (2021) 07 OHC CK 0011

Hon'ble Judges : S. K. Panigrahi, J

Bench : Single Bench

Advocate : Kousik Ananda Guru, Tushar Kumar Mishra, Manoj Kumar Mohanty, H.S. Mishra, A.K. Mishra, R.Dash, Srinivas Mohanty

Final Decision : Disposed Of

Judgement

S. K. Panigrahi, J.

1. The present petitioner has filed the instant Anticipatory Bail application under Section 438 of Cr.P.C. corresponding to Burla P.S. Case No.251 of

2021 pending in the Court of the learned S.D.J.M, Sambalpur. The petitioner herein has been accused in connection with alleged commission of

offences punishable under Section 306 read with Section 34 of the I.P.C. Prior to the present Application, the petitioner approached the court of the

learned Sessions Judge, Sambalpur in ABLAPL No.81 of 2021, wherein vide order dated 24.05.2021, the learned Sessions Judge rejected the said

pre-arrest bail petition.

2. Shorn of unnecessary details, the facts of the present case are that the deceased one Mr. Dinabandhu Mishra was serving as a Technical Assistant

(Computer) on contractual basis at Sambalpur University for about 27 years. The

petitioner herein was appointed as the Vice-Chancellor of Sambalpur University on 25.01.2021 and has been discharging his duties and responsibility since then. On 20.04.2021, the deceased wrote a letter to Registrar, Sambalpur University wherein he stated that the petitioner had called him on 15.04.2021 to question him regarding leaking of some information to the press about burning of cut wood. Further, the letter states that the petitioner had called upon the deceased on the unfortunate day of 20.04.2021 wherein the deceased claimed that the petitioner had used filthy language and made false allegations against him regarding theft of some University property without any basis. The deceased also claimed that the behaviour of the Vice-Chancellor is not tolerable to him and therefore he would commit suicide and upon his death, the petitioner, one Mr. Abinash Kar and Prof. Biswajit Satpathy are to be held responsible.

3. Learned counsel for the petitioner submitted that these facts and circumstances do not, in any way, indicate that the alleged act would constitute abetment to commit suicide. The ingredients to constitute the said offences are completely absent in the present case. He also contended that there is complete absence of any sort of instigation or any positive move on the part of the petitioner causing the deceased to commit suicide. Although the incident is mournful and very unfortunate, the petitioner cannot be prosecuted for the offences punishable under Sections 306 of the Indian Penal Code, 1860. It was also submitted that the petitioner is absolutely innocent and has been falsely implicated in this case on the ground that he has abetted the suicide committed by the deceased. It is also argued that the ingredient of abetment as laid down in Section 107 is completely absent in this case and as such Section 306 of the Penal Code, 1860 is not attracted. Lastly, during the course of arguments learned Counsel for the Petitioner has also brought to the notice of this Court that the deceased on an earlier occasion on 25.03.2014 had given the representation to Sri S.C. Jamir, the then Governor of Orissa, threatening for self-immolation if his service was not regularised immediately. Further, on 7.09.2015 he sent a representation to the then Vice-Chancellor of Sambalpur University stating therein that he wanted to end his life. In yet another letter dated 24.07.2018 addressed to the then Vice-Chancellor, Prof. Dipak Behera, the deceased had categorically stated that he was totally in an unbalanced state of mind and he reminded

about his repeated message describing his mental status through Whatsapp and threatened self-immolation. Thus, in the past, he had frequently

threatened the authority to commit suicide which reflects his vulnerable state of mind and conduct in general. Hence, the petitioner cannot be

attributed to the alleged abatement of suicide. This Court should not be persuaded by the alarming and hyperbolic verbiage used in the media and by the informant. Accordingly, the prayer for anticipatory bail may be allowed.

4. Per contra, the learned counsel appearing for the State has vehemently opposed the anticipatory bail application and has submitted that investigation

is ongoing and the suicide letter/note itself states that the accused persons including the present petitioner used to create mental pressure on the

deceased which has resulted in his committing suicide. The learned counsel for the State further contends that the contents of the First Information

Report (FIR) and the investigation conducted by the police so far sufficiently establishes that the accused persons are responsible for abetting suicide

of the deceased. It is clear from the plain reading of the Case Diary that the present case is not a prima facie exclusion of guilt case hence falls under

the ambit of Section 306 of I.P.C.

5. The learned Counsel appearing for the informant submitted that on the morning hour of 15.4.2021, the Vice-Chancellor/Petitioner herein called the

deceased to his cabin and alleged that he had given information to the press regarding the huge burning of cut wood as extracted from the small forest

in front of the administrative building which is false and baseless. Further, on 20.04.2021 at about 9.10 AM, the deceased was called to the chamber

of the Vice-Chancellor (VC) and said to have some discussions regarding theft of some materials from the Hostel and thereafter the petitioner angrily

called him "Get out of my chamber." After that, at about 9.45 AM, the deceased informed the matter in writing to the Registrar indicating his

intention to commit suicide due to harsh language used by the VC and making false allegation against him. Unfortunately, on the same date at about

10.30 AM he poured some inflammable liquid over his head and sets himself ablaze near the chamber of the VC. Some members of the University

staff tried to douse the fire with the help of fire extinguisher and immediately took him to VIMSAR, Burla for medical treatment and then VIMSAR,

Burla referred the case to SCB Medical College & Hospital, Cuttack. On his way to

Cuttack the deceased eventually breathed his last near Angul on

20.04.2021. He, further, submitted that the rude behaviour of the petitioner, his arbitrary attitude has clearly inflicted a deep scar on the psychology of

the deceased which triggered him to take such a drastic step of self-immolation and died an excruciatingly painful death. Despite so much of

subjective narrative created by the petitioner's counsel, the petitioner's action provoked a strong and shocking emotional response in terms of

a unique violence against self which cannot be said to be in vacuum.

6. Heard learned Counsel for the parties in extenso, and perused the case diary and other relevant records. The petitioner has been charged with

Section 306 read with Section 34 of the I.P.C. Generally, while considering an application for anticipatory bail the factors to be considered are; (i) the

nature and gravity of the accusation, (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment

on conviction by a Court in respect of any cognizable offence, (iii) the possibility of the applicant to flee from justice, (iv) where the accusation has

been made with the object of injuring or humiliating the applicant by having him so arrested, (v) the character, behaviour, antecedents, means, position

and standing of the accused in the society and (vi) reasonable apprehension of the witnesses being tampered with or the investigation being interfered

with.

7. More than four decades ago, in a celebrated judgment in State of Rajasthan v. Balchand (1977) 4 SCC 308, Krishna Iyer, J. pithily reminded that

the basic rule of our criminal justice system is "bail, not jail". These words of Krishna Iyer, J. are not isolated silos in our jurisprudence, but have

been consistently followed in judgments of the Hon'ble Supreme Court of India for decades.

8. Under Section 438, the question which vexes the court seized of the matter is whether a person, if arrested, on an accusation of having committed a

non-bailable offence, can be released on bail. The apprehension of such an arrest is possible only when the person is being sought for arrest by the

police or other authority. At this juncture, a person cannot move the Courts under Section 437 or under Section 439 because he is not in custody. But

he can very well approach the High Court or the Court of Session under Section 438 for an appropriate order. The High Court or the Court of Session

in its turn is competent to examine the case of the person and his suitability to be enlarged on bail after the arrest and then only an order under Section 438 is passed.

9. Section 438 of the Code makes a special provision for granting anticipatory bail in the Code of Criminal Procedure,

1973. The expression anticipatory bail has not been defined in the Code. But as observed in *Balchand Jain v. State of M.P.* (1976) 4 SCC 572,

anticipatory bail means a bail in anticipation of arrest. The expression anticipatory bail is somewhat of a misnomer inasmuch as it is not as if bail

presently granted is in anticipation of arrest. Where a competent court grants anticipatory bail, it makes an order that in the event of arrest, a

person shall be released on bail forthwith. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the

order granting anticipatory bail becomes operative.

10. With the above background, it becomes imperative to rely on the leading case of *Gurbaksh Singh Sibbia v. State of Punjab* (1980) 2 SCC 565 The

Full Bench of the High Court summarised the law relating to anticipatory bail as reflected in Section 438 of the Code and laid down certain principles

as to when discretionary power to grant anticipatory bail may be exercised by a Court. The Honorable Apex Court partly disagreeing with the

judgment of the High Court held that the legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail

since it felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly,

because the intention seemed to be to allow the courts higher up in the echelon, a somewhat free hand in the grant of relief in the nature of

anticipatory bail.

11. The offences brought out against the petitioner is Section 306 of I.P.C. which may be 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."

Further, it provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished with a sentence

which may extend up to 10 years. However, the abatement is not defined under the Section 306 of Penal Code, hence one has to take the aid of

Section 107 of Penal Code, 1860. Section 107 of the I.P.C. reads as follows;

107. Abetment of a thing.—"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 aids, by any act or illegal omission, the doing of that thing."

In order to prove the charge of abetment, the accused must have instigated a person to do a thing, in this case, to commit suicide or intentionally aided

the deceased to commit suicide. If one goes by the suicide note of the deceased, one would find that the deceased does not state how the appellant

had instigated or intentionally aided him in committing suicide. The two terms —"instigates", and —"intentionally aids", have been intentionally

used in Section 107 of Penal Code, 1860 would necessarily require mens rea on the part of the accused in order to hold him guilty of the offence of

abetment of suicide.

12. The Hon'ble Supreme Court while dealing with the interpretation of Section 306 in *M. Arjunan v. State* (2019) 3 SCC 315 has succinctly held

that;

7. The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the

deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of

suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients

of instigation/ abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC."

The Hon'ble Supreme Court while dealing with the concept of abetment has expressed that the component of mens rea

must shine forth, as was held in the case of *S.S. Chheena v. Vijay Kumar Mahajan* (2010) 12 SCC 190:

25. 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.

The Apex Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605 also had another occasion to deal with the aspect of

abetment. The Court dealt with the dictionary meaning of the words 'instigation' and 'goading'. It is opined that there should be intention to

provoke, incite or encourage the doing of an act by the latter. Each person's propensity/pattern to commit suicide are different from the other. Each

person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any strait jacket formula in dealing with such cases.

Each case has to be decided on the basis of its own facts and circumstances.

In the case of *State of W.B. v. Orilal Jaiswal* (1994) 1 SCC 73 the Hon'ble Supreme Court dealing with the concept of relative self-esteem held

that-

17. 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.

13. Instigation is to goad, urge forward, provoke, incite or encourage to do an

actâ?. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. It must also be noted that deceased had on previous occasions prior to the appointment of the petitioner also resorted to many agitational activities like dharnas, gheraus and hunger strikes in the University. The deceased had threatened self-immolation, suicide as well as made requests for euthanasia on previous occasions to the erstwhile Vice-Chancellors and Chancellors in order to pressurise the administration in the past demanding regularisation of service. Be that as it may, in the present facts of the case, a case for securing the custody of the present petitioner is not made out. Whether or not, an offence is disclosed under Section 306 of the Indian Penal Code, 1860 or not, is a matter which will be considered by the trial Court at the appropriate stage.

14. The Honâble Supreme Court in a similar case in the case of Bhausaheb v. State of. Maharashtra (2018) 3 SCC

221 had granted anticipatory bail to the accused who had allegedly abetted suicide and was named by the deceased in the suicide note on the condition that the accused shall cooperate with investigation. Furthermore, in Madan Mohan Singh v. State of Gujarat (2010) 8 SCC 628, the Apex Court has opined that in so far as Section 306 IPC is concerned, merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for harnessing a charge under Section 306 of the IPC. Thus, such cases have been held to be still falling short of a proper allegation. It would have to be objectively seen whether the allegations made could reasonably be viewed as proper allegations against the appellant/accused to the effect that he had intended or engineered the suicide of

15. The human sensitivity differs from person to person. It is unfortunate that such a tragic episode of suicide had taken place in the case of the deceased. But the question remains to be answered is whether the petitioner herein can be connected with such unfortunate incident in any manner, was there any motive or positive move on the part of the accused to abate such suicide etc. which can be established after a thorough inquiry followed by a proper trial.

17. Accordingly, this pre-arrest bail application is allowed as follows: In case the petitioner is arrested in connection with Burla P.S. Case No.251 of 2021, he shall be released on bail forthwith on his executing bond of Rs.25,000/- (Rupees twenty-five thousand only) with two sureties each of the like amount to the satisfaction of the learned court in seisin over the matter with further condition that the petitioner shall cooperate with the investigation and shall not influence, coerce or intimidate any witness.

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