

(2023) 01 DEL CK 0098
In the Delhi High Court
Case No : Bail Application No. 1332 Of 2022

V K Kanjlia

APPELLANT

Vs

State Nct Of Delhi

RESPONDENT

Date of Decision : 19-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 228
Indian Penal Code, 1860 — Section 34, 43, 107, 306

Citation : (2023) 01 DEL CK 0098

Hon'ble Judges : Jasmeet Singh, J

Bench : Single Bench

Advocate : Ramesh Gupta, Sanjay Dewan, Sanjay Aggarwal, Shivani Pruthi,
Ajay Vikram Singh, R. Ramachandran

Final Decision : Disposed Of

Judgement

Jasmeet Singh, J

CRL.M.(BAIL) 496/2022

1. This is an application seeking anticipatory bail in FIR No. 644/2020 u/s 306/34 IPC registered at PS Adarsh Nagar and proceedings arising therefrom.
2. The FIR was registered on 23.09.2020 by Mr. Manoj Kumar Gupta, husband of Poonam Gupta.
3. The FIR was registered against Sunil Sharma (Chief Manager), G.P. Patel (Director since 01.06.2020 holding the additional charge of Secretary, CBIP), G.P. Patel (Director) and the Applicant, Secretary (since 31.05.2020 demitted from CBIP) on the grounds that they pressurized and abetted the wife of the complainant, Mrs. Poonam Gupta (Manager, F. & A.) to commit suicide on 05.05.2020 by hanging herself from chunni to the ceiling fan at her residence, I floor of 110/24 Kewal Park, Azadpur, Delhi.
4. It is stated by Mr. Ramachandran, learned counsel for the complainant that the

applicant failed to forward the complaint made by the deceased, Poonam Gupta and/or take any corrective measures on the said e-mail.

5. The e-mail of 12.04.2020 is reproduced as under:

"Respected Sir,

With reference to observations given by Mr. Sunil Sharma, Chief Manager, Mr. Vishan Dutt, Chief Manager and Mr. Ashok Kumar, S.P.S. in the trailing mail, it is submitted as follows:

The major points raised by Mr. Sunil Sharma & others are about operations of CBIP employees PF Trust. As you are aware that, the CBIP Employees Provident Fund Trust is about 20 year old. It runs as per rules and regulation for CBIP Employees Provident Fund Trust as given in CBIP Personnel Manual under your guidance. Bank accounts and other activities are operating in the same manner as before my joining the CBIP.

Further, I wish to mention that in rules and regulation for CBIP Employees Provident Fund Trust as given in CBIP Personnel Manual, there is no provision about meeting of members & conducting of elections. Also, all other activities related to operations of said Trust are governed as per rules and regulation for CBIP Employees Provident Fund Trust as given in CBIP Personnel Manual P.F. contributions are being deposited as and when received from the Board as per your direction/orders from time to time. To my knowledge such points were never raised by any member of the said Trust during last 10 years (since my joining).

Now, I wish to bring in your kind notice about the rude behavior of Mr. Sunil Sharma, Chief Manager towards me since my promotion as Manager. He is very senior to me both in experience and age but his behaviour is extremely unbearable. It's humiliating and created hostile work environment for me. I have informed about the bad behaviour of Mr. Sunil Sharma to you and Director (WR) as well at various occasions in past but to my knowledge no action has been taken against Mr. Sunil Sharma so far. His behaviour towards me is getting worsened. This e-mail is the proof of same. Due to this hostile office environment created by him, I am unwell almost since last one month and my office work productivity has gone down. I am very much disturbed.

Now as usual kindly advice whether any reply needs to be given in respect of mail or not.

Thanks & high Regards

Poonan Gupta"

6. He also states that a complaint of 13.08.2019 was also made which reads as under:

"To

The Secretary

Central Board of Irrigation and Power

Malcha Marg, Chanakyapuri, New Delhi-110021

Sub: Inappropriate behaviour of Mr. Sunil Kumar Sharma.

With reference to above it is submitted that behaviour of Mr Sunil Kumar Sharma, Chief Manager (Tech), is inappropriate with respect of office decorum, multiple times he made bad comments regarding my leaves, promotion, disbursing cash and management of office work with staff. Mr. Sunil Kumar Sharma always taunt the junior staff whether they do each and everything after asking from Ms Poonam Gupta. In this connection it is pointed out that it is the duty of undersigned to guide the staff and give suitable instructions in day to day working. His comments are detrimental for the image of a female officer. His unnecessary taunting and bad remarks affects my peace of mind and working also.

Further inspite of positive handling the official matters relating to procedural compliances by me, only hindrances are created by him, which are affecting the working and smooth functioning of CBIP work. In case any official formalities to be complied are informed to him, he always denies, starts shouting and rejects the same. When payments to vendors related to him are not made due to non allocation for payment by Secretary, the same is exposed as if it is the fault of P&A dept only. Inspite of explaining the same to him numerous times that it depends on fund allocation, he does not understand and starts shouting and misbehaving. Such rude and incivility behavior harshly effect the official working beside mental distress to me.

After serving CBIP for 9 years with full dedication and commitment, I am getting unwanted treatment from only this officer. Our Society, culture and government is trying its level best for creating a cordial working environment for staff especially for female staff whereas it seems that officers like Mr. Sunil Kumar Sharma is totally against the said policies. The above points have been brought to your notice time to time verbally.

This is put up to the Management of CBIP for such action as deemed fit. A line of reply for action taken in this regard shall be appreciated.

Thanks and Regards

Poonam Gupta

Manager (F&A)

CBIP"

7. He states that the applicant has not acted on the said e-mails and encouraged creation of a hostile environment in office which led to the deceased tendering her resignation on 01.05.2020 and thereafter taking the extreme step of

committing suicide on 05.05.2020.

8. He states that the inaction and creation of hostile environment due to the inaction of the appellant comes within the parameters of abetment as defined u/s 107 of the IPC.

9. He has drawn my attention to two judgments of the Hon'ble Supreme Court in "X vs. Arun Kumar CK & ANR." CRL.A. 1834/2022 and "Praveen Pradhan vs. State of Uttaranchal & Anr." in Crl. Appeal No. 1589/2012.

10. The operative portion of Arun Kumar CK (supra) reads as under:

".....There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."

11. The operative portion of Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC 734 reads as under

"18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC."

12. Mr. Singh, learned APP states that the custodial interrogation of the applicant

is required to finding out the links of the private firms in which investments of the Trust were made by the deceased on instructions of the applicant and on the advice of co-accused, Mr. Manish Singhal.

13. Mr. Gupta, learned senior counsel for the applicant has opposed the above contentions and stated that the applicant was not the immediate boss of the deceased as far as the Trust is concerned. He was not an office bearer of the Trust.

14. He states that there are two separate organisations, one CBIP and CBIP Trust. The CBIP Trust is an independent body and distinct from CBIP.

15. He states that the applicant had nothing to do with CBIP Trust.

16. He further states that on 12.04.2020, when the e-mail was received from the deceased, it was the height of first wave of COVID 19 pandemic and every person was working from home. Thereafter, the contract of the applicant with CBIP came to an end on 31.05.2020 and hence there was no occasion for him to act on the e-mail of 12.04.2020.

17. Without prejudice to the above, he says that even inaction upon the e-mails of 12.04.2020 does not bring the Applicant within the purview of Section 107 of the IPC.

18. He has also relied on the e-mail of 01.05.2020 sent by the deceased to the Applicant.

19. I have heard learned counsel for the parties.

20. Section 107 IPC reads as under:

"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.

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 facilitate the commission thereof, is said to aid the doing of that act."

21. In the present case, the e-mail of 01.05.2020 which is the resignation of the

deceased does not cast any aspersions of creating a hostile environment by the Applicant. In fact, the said e-mail is thanking the Applicant for the years of fulfilling employment. It reads as under:

"To

The Secretary/The Director (WR)

Central Board of Irrigation and Power

Malcha Marg, Chanakyapuri,

Delhi-110021

Respected Sir

I present to you this letter of resignation from my current position of Manager (F&A) from 01.05.2020 and can be relieved on 31st May, 2020. Also, I ensure you that I will abide the rules of notice period as per CBIP Manual.

I would like to take this opportunity to thank you for the years of fulfilling employment. I have learned a lot during my time here and will be leaving with many great experiences.

I hope you realize my quitting is in no way a reflection of your ability to manage, but I must move on for personal reasons.

Thanking you

Yours sincerely

Poonam Gupta

Manager (F&A)"

22. The suicide note left by the deceased reads as under:

"Sorry Manoj, Prachi and Surabhi.

I am going.

Due to problem of CBIP PF Trust caused due to investment falling down which were made on the instructions of Mr. Vijay Kumar Kanjlia and advise of Mr. Manish Singhal. I can't bear this tension any more.

Moreover, behaviour of Mr. GP Patel, Mr. Sunil Sharma is haunting me for the coming irregularity."

23. The same also does not seem to be indicative of the Applicant abetting suicide by the deceased.

24. In fact, the said suicide note indicates behaviour of Mr. GP Patel and Mr. Sunil Sharma as haunting the deceased.

25. Mr. Sunil Sharma has been granted regular bail and Mr. GP Patel has been

granted anticipatory bail by competent courts of jurisdiction.

26. Even assuming that the Applicant has not acted on the e-mail of 12.04.2020, the same according to me does not come within the purview of 'illegal omission'.

27. 'Illegal' has been defined in Section 43 IPC which reads as under:-

"43. "Illegal", "Legally bound to do".—The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit."

28. There is nothing on record or shown to me which shows that the applicant was mandated in law to be legally bound to act on the mail of 12.04.2020. At best not acting on the email of 12.04.2020 and 13.08.2019 sent by the deceased may be a dereliction of duty or a casual approach by the applicant but cannot by any stretch mean to be an illegal omission under Section 107 IPC.

29. That being said, the problem of toxic work culture is problem plaguing all booming economies. In Japan, there is a term used for the same called 'karoshi' which means 'overwork deaths,' i.e., a large number of deaths caused on account of hostile working environment which causes physical and mental stress. The government of Japan acknowledged this as a socio-economic problem and not a criminal offence. Subsequently, the government of Japan has drafted policies that address mental health in workplaces. I, too, am of the opinion that death caused due to overwork and toxic work environment is a social problems which requires the government, the labour unions, the health officials and corporates to formulate appropriate policies. What is needed is an examination of the issues of overwork and occupational stress focusing on mental health at workplace.

30. In the present case as well, the unfortunate incident of death of Ms. Poonam Gupta can be attributable to mental stress but cannot be brought within the parameters of Section 107 IPC.

31. On 12.04.2020 when the e-mail was sent, it was the height of first wave of COVID 19 pandemic and everyone was working from home. Thereafter, the contract of the applicant came to an end on 31.05.2020.

32. Lastly, the judgements relied by the petitioner are not applicable to the facts of this case. In Arun Kumar (supra), the judgment holds that non-requirement of custodial interrogation cannot be the only ground for deciding anticipatory bail. In the present case, since, the ingredients of section 107 IPC are not made out, the judgment is not applicable.

33. Similarly, the judgment of Praveen Pradhan (supra) is also not applicable as in my opinion, no circumstances were created by the Applicant which prompted the deceased to commit suicide.

34. For the aforesaid reasons, I am inclined to allow the application and in case of arrest in FIR No. 644/2020 u/s 306/34 IPC registered at PS Adarsh Nagar, the

applicant shall be released on bail on furnishing a personal bond to the tune of Rs. 10,000/- to the satisfaction of the Trial Court.

35. The applicant shall join investigation as and when directed by the IO and fully cooperate with the same.

36. The application is disposed of in the above terms.