

A.F.R.

Neutral Citation No. - 2023:AHC:145334

Reserved On:- 13.07.2023

Delivered On:-18.07.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29409 of 2023

Applicant :- Jai Govind @ Ramji Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Vineet Vikram,Imran Ullah

Counsel for Opposite Party :- G.A.,Vipin Kumar

Hon'ble Siddharth,J.

1. Heard Sri Imran Ullah, learned counsel for the applicant; Sri Jai Kishan, Advocate, holding brief of Sri Vipin Kumar, learned counsel for the informant and as well as the learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, Jai Govind @ Ramji Yadav, with a prayer to release him on bail in **Case Crime No. 418 of 2022, under Sections 306, 504 and 506 IPC, Police Station- Nawabad, District- Jhansi** during pendency of trial.

3. The implication of the applicant has been made after proceedings under Section 156(3) for committing the offences under Sections 306, 504, 506 IPC. The prosecution case is that the applicant and the daughter of informant, namely, Kajal, were having love affair. The applicant and co-accused persons had threatened the informant and her husband due to which her husband went into depression and died on 21.04.2021 due to heart-attack. It is further alleged that on 27.10.2021, the applicant and co-accused persons entered into the house of the informant and threatened them and Case Crime No. 232/2021, under Section 504, 506 was registered against them. It was further alleged that due to threats extended by the applicant, the daughter of the informant had given Rs. 1 lakh to him. On 08.05.2022, she was kidnapped and raped by the applicant and other co-accused persons for four days as a result of which she suffered depression. She was again abducted on 09.06.2022 and thereafter, left in the market. She met her sister, Nancy, and informed her that she has been given something intoxicating to drink and thereafter she was subjected to rape by the accused persons who made her video also. Thereafter, she became unconscious and taken to hospital where she died on 10.06.2022.

4. Learned counsel for the applicant has submitted that admittedly the incident took place on 09.06.2022 and the victim, Kajal, died on 10.06.2022, but the application was made before the CJM, Jhansi, under Section 156(3) Cr.P.C., on 18.06.2022 whereon FIR was lodged on 04.07.2022. He has submitted that the deceased died in the hospital where she was allegedly taken by her sister, Nancy, on 09.06.2022 but the ward boy of the Medical College, Jhansi, Namely, Manoj, informed the police about her death by consumption of poison. Thereafter, inquest of the body of the deceased was conducted and the cause of her death was not ascertained and viscera was preserved. The informant was present with the deceased all through and she did not made any complaint to the police even after the death of the deceased. After the death of her daughter, informant made complaint against one, Ayush Thakur, with whom the deceased had close relationship. Aforesaid, Ayush Thakur, was close relative of a sitting MLA of ruling party. Hence, the First Information Report was not lodged against him. After the alleged incident, informant repeated the same allegations as in the FIR, in her statement under Section 161 Cr.P.C. Independent eye witness denied seeing any such incident. The younger sister of the deceased also repeated the allegations in the FIR. The Investigating Officer recorded the statements of landlords of the house where the deceased used to live. They stated that the deceased was having love affair with Ayush Thakur, but their relationship was also not acceptable to the family of the deceased. Quarrel used to take place between both the families therefore the landlord asked the deceased and her sister to vacate his house. Subsequent landlord also informed the police that the deceased had come to live in their house and was having affair with a boy living in Shivaji Nagar. The owners of the society in the locality stated before police that the deceased purchased an All-Out mosquito repellent and consumed the same in the market place on the date of her death. The Investigating Officer further found that at one point of time, the applicant and the informant were very close and wanted to marry, but their families did not agreed. She was ousted by her parents and living in a rented home. The mobile number used by the deceased was new and not known to the applicant. Initial implication of the applicant for committing the offence of gang-rape, abduction, intoxication and murder of the deceased was not found to be correct by the Investigating Officer and hence Investigating Officer implicated the applicant only under Section 306/504/506 IPC. No video of any offence committed by the applicant against the victim was recovered by the Investigating Officer. Learned counsel for the applicant has submitted that even the implication of the applicant under Section 306 IPC is not in accordance with law since there is no evidence of abetment of suicide of the deceased against the applicant. The applicant has not committed any direct or indirect act for instigating the deceased to commit suicide. There was no positive action of

the applicant which may have compelled her to commit suicide. The applicant is languishing in jail since 28.11.2022.

5. Learned A.G.A. and learned counsel for informant have vehemently opposed the prayer for bail of the applicant and have submitted that the offences alleged against the applicant are fully made out. They have submitted that from the CDR details of the deceased, it has been found that the applicant did not liked the relationship of the deceased with the other boys and he used to ask her not to marry any of them and hence committed suicide. The sister of the deceased has stated that on 09.06.2022, the deceased had gone with the applicant and thereafter she consumed something and died.

6. After hearing the rival contentions, this Court finds that it is a case where the deceased had initial affair with the applicant and both wanted to marry, but family members of deceased came in their way. Thereafter the victim developed relationship with another boy, Ayush Thakur, but the relationship with the applicant does not appears have been fully broken. Between the two relationships, the deceased could not find out any clear way and therefore, it appears that she consumed the mosquito repellent of Good Night after purchasing it from a shop and fell unconscious in the market place. She was taken to the hospital where she died during treatment. Initially allegations in the FIR were not found to be correct by the Investigating Officer which were regarding commission of offences of abduction and murder of the deceased. However, the applicant was implicated for committing the offence of abetment of suicide of the deceased, but the ingredients of constituting such an offence also do not appear to be made out against the applicant as held by Apex Court in number of decisions being considered herein below;

7. In the Case of **Amalendu Pal V. State of W.B. (2009) 4 SCC 52** Apex Court has held that it is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of **Section 306** IPC is not sustainable.

8. In case of **Geo Varghese V. State of Rajasthan (Criminal Appeal no. 1164 of 2021)**, it was held that from the intention of the legislature and the ratio of the case decided by the Supreme Court is clear that in order to convict a person under section 306, 504 and 506 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 positions that he committed suicide

9. In the celebrated case of **Common Cause Union of India reported in (2018) 5 SCC 1**, it has been held that "to constitute abetment, there must be course of conduct, or action of intentionally aiding or facilitating another person to end life.

10. In the case of **Rajput Ranjit Bhai Khodabhai vs. State of Gujarat AIR ONLINE 2019 GUJ 775**, it has been held that in order to bring out an offence under Section 306, 504 and 506 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, 504 and 506 IPC. 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 various Courts are clear that in order to convict a person under Section 306, 504 and 506 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.

11. Hon'ble Apex Court in the case of **Ramesh Kumar vs. State of Chhattishgarh, reported in (2001) 9 SCC 618**, dealt with the issue. The relevant paragraph of the aforesaid judgment is reproduced as under:-

12. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". 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.

13. That the **Hon'ble Apex Court in the case of Gurcharan Singh vs. State of Punjab AIR 2017 SC 74: Para 22** has held that the basic ingredients of provision of S. 306, 504 and 506 are suicidal death and the abetment thereof and to constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative.

Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306, 504 and 506 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306, 504 and 506 IPC, thus criminalizes the sustained incitement for suicide. In the present case, the suicide note reveals that apart from an omnibus grievance against the accused herein, for which according to him, he ought to be punished, there is no reference or disclosure of any specific incident in support thereof.

14. Before parting this Court finds that this is one of the many cases coming to the court where the youth in this country are spoiling their lives due to lure of free relationship with the member of the opposite sex aping western culture and not finding any real soulmate in the end. In the present case, the victim hopped from one affair to the other with number of boys and later on account of resistance of her family or incompatibility with the boys she befriended, she committed suicide in frustration. This shows that the youth in this country under the influence of the social media, movies, T.V. serials and the web series being shown are not able to decide about the correct course of their life and in search of their correct soulmates, they often land up in the company of wrong person. The Indian families have not yet been able to accept the choice of their children, when it comes to selection of their life partners. Their family also stumbles on the issues of caste, religion, monetary status, etc., of the partner chosen by their child and this sometimes leads to their children absconding from home for marrying person of the own choice; sometimes to suicide and sometimes to further relationship contacted in hurry to fill the emotional lacuna left by the earlier unsuccessful relationship. The Indian society is in the state of confusion whether to permit their young children to adopt the western norms or to keep them firmly within the bounds of Indian culture. The young generation, unaware of the consequences of following the western culture is entering into the relationships being aired on the social media, movies etc., and thereafter, after denial of social recognition to their choice of partner they become disillusioned and behave, sometimes against the society, sometimes against their parents and sometimes also against the partner of their choice when they do not find any way out from the predicament wherein they get landed after entering into such relationship. The social medial, movies etc., show that multiple affairs and infidelity to the spouse are normal and this inflames the imagination of impressionable minds and they start experimenting with the same, but they do not fit in the prevailing societal norm.

15. Due to the above situation the following types of cases are mostly pouring in the courts;-

(i) Commission of offence of rape on false promise of marriage;
(ii) Commission of offence of instigation to commit and suicide;
(iii) Commission of offence of murder or offence of culpable homicide not amounting to murder with the help of estranged friend or his companions; and

(iv) Cases of false implication regarding other major and minor offences arising out of such relationship are also coming:

16. Having considered the submissions of the parties noted above and relevant cases laws finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022 and considering 5-6 times overcrowding in jails over and above their capacity by under trials*** and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion

of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

17. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

18. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

19. The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of two years.

20. **Registrar(Compliance) is directed to communicate this order to the concerned court below within ten days.**

Order Date :-18.07.2023

Abhishek