

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on:16.04.2024

+ **BAIL APPLN. 2543/2023 & CRL.M.A. 30106/2023****AARUSHI GUPTA** Applicant

versus

STATE GNCT OF DELHI Respondent+ **BAIL APPLN. 3178/2023 & CRL.M.A. 25655/2023****RISHAB NAYYAR** Applicant

versus

STATE GNCT OF DELHI Respondent**Advocates who appeared in both the cases:**

For the Applicant : Mr. Vineet Jain, Adv. in BAIL APPLN. 2543/2023.

: Sr. Adv. Maninder Singh with Adv. Arjun Sanjay, Adv. Aekta Vats & Adv. Simran Chaudhary in BAIL APPLN. 3178/2023

For the Respondent : Mr. Utkarsh, APP for the State with SI A. Kumar, PS Jagatpuri.

Adv. Urvashi Sharma, for complainant through V.C.

CORAM**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present applications are filed under Section 438 of the Code of Criminal Procedure, 1973, seeking grant of pre-arrest bail in FIR



No.294/2023, dated 06.05.2023, for offence under Section 306 of the Indian Penal Code, 1860, registered at Police Station Vivek Vihar.

2. The FIR was registered on a complainant made by the father of the deceased alleging that the applicants had instigated the deceased to commit suicide. The applicant namely Aarushi Gupta is stated to be in a romantic relationship with the deceased and the applicant Rishab Nayyar is stated to be a common friend.

3. It is alleged that on 29.04.2023, at about 9:30 P.M. the deceased had left the house with his friend namely, Karan, in his car, on the pretext of going out for some work. It is stated that the deceased had called his father (complainant) and his mother and told them that after leaving the house he had gone to Sector 29, Gurugram, Haryana, where he saw the applicants together and upon enquiring as to why they both were meeting a scuffle took place between the deceased and the applicants, in which the deceased sustained injuries and his car was also damaged by the applicants by throwing bricks.

4. It is alleged that while the deceased was leaving the alleged place of incident, the applicants instigated him by saying they made physical relations with each other and will get married soon. It is alleged that applicants had also instigated the deceased by stating that he does not have manhood abilities and he should commit suicide or else they will upload the images of his broken car window along with the photographs of the deceased with the title "*Jaisi Nalli Car vaisa Nalla Karan*".



5. It is stated that the deceased informed the complainant about the entire incident and thereafter the complainant also consoled the deceased and asked him to come home in a cab.

6. It is stated that on 30.04.2023, at around 6:00 a.m., the complainant spoke to the deceased whereby the deceased reiterated the entire incident and was shivering due to fear and depression. Thereafter, the complainant called the applicants and asked them not to instigate the deceased, to which the applicant–Aarushi Gupta, threatened the complainant of implicating him and the deceased in false cases.

7. The car of the deceased was still at the alleged place of the incident and the complainant on 30.04.2023, at around 7:00 a.m., had gone to pick up the car with his wife. The car was stated to be damaged and the broken glasses of the deceased were found lying on the road. The complainant called the applicant–Rishab (since he had snatched the keys from the deceased) asking for car keys, to which he refused and said that he'll upload the photograph of the same with a status "*Jaise tuti car ki chabivaise hi Karan*".

8. The complainant called an online key maker and also called the deceased to transfer the money online. The last conversation between the complainant and the deceased took place on 9- 9:30 a.m., and afterwards when the mother of the deceased reached the house at around 11-11:00 a.m., she found the door of Karan's room half open. She went to the room and found body of deceased hanging on the fan with a chunni, and it was only on 01.05.2023, the complainant got to



know about the relationship of the deceased with Aarushi Gupta when he got the phone of the deceased unlocked.

9. A suicide note was also recovered in which the deceased had written that he is committing suicide because of present applicants on 30.04.2023 at 06:50 a.m.

Submissions on behalf applicant– Aarushi Gupta

10. The learned counsel for the applicant submitted that she has been falsely implicated in the present case. He submitted that the suicide note left by the deceased thereby mentioning the name of the present applicants, and except the name given in the suicide note there is nothing to show that he was prompted, forced & instigated by these persons to commit suicide.

11. He submitted one Paras from whom the deceased had monetary transaction and one another girl namely Swati Basra have also been mentioned as responsible for the deceased committing suicide, which shows that the complainant got the FIR registered without any basis.

12. He submitted that applicant came into contact with the deceased a long back, but due to the conduct and harassment caused by the deceased, the applicant broke-up the friendship sometime back. He submitted that the deceased & his family, were the ones who continuously harassed, stalked & forced the applicant to talk to the deceased. The applicant was constantly threatened with the fear that the deceased will commit suicide as earlier also the deceased had made an attempt to commit suicide, and had tendency of committing suicide.



13. He submitted that the applicant had blocked the deceased from her social media, but it was the deceased who used to contact her from different mobile phone numbers thereby, constantly harassing her.

14. He submitted that prior to the day of alleged incident, the applicant along with her friend was at a get together at Gurgaon & it was the deceased, who himself reached the place whereafter the applicant made a call at 100 no. complaining about the harassment from deceased.

15. He further submitted that there are certain whatsapp chats between the sister of the deceased & the applicant from which it is clear that the sister of deceased herself requested the applicant to talk to him, and even promised that the applicant will not harass her.

Submissions on behalf applicant– Rishabh Nayyar

16. The learned senior counsel for the applicant submitted that the applicant has been falsely and vengefully implicated in the present case.

17. He submitted that there is inordinate four days delay, after the deceased has committed suicide, in logging of the FIR. He submitted that as per the prosecution the suicide note was recovered on 30.04.2023, and the FIR was not registered on the said day.

18. He submitted that in order to attract the offence of 306, IPC, there has to be instigation in order to goad, provoke or encourage the deceased to commit suicide. There have to be use of words which are in direct connection with instigation to the deceased to commit suicide.



19. He submitted that there are certain flaws in the prosecution story as alleged. He submitted that as per the FIR the incident of the death of the deceased was reported to have taken place at 11-11:30 a.m. but the alleged suicide note states that the deceased was committing suicide at 6:50 a.m. and in the meanwhile the complainant and deceased spoke to each other as well and the deceased transferred the money to the complainant.

20. He further submitted that there is no *iota* of evidence against the applicant which can attract the offence under section 306 of the IPC.

Submissions on behalf of the Prosecution

21. The learned Additional Public Prosecutor opposed that the grant of bail to the applicants.

22. He submitted that the offence committed by the applicants is heinous in nature and the names of both the applicants were written in suicide note, because of whom the deceased committed suicide.

23. He submitted that during the course of investigation various CDR details were also obtained from which it was revealed that the deceased had called his parents and had reached Sector 29 Gurugram at around 04:28 a.m. where the applicants were already present. The CCTV footage was also obtained in which the deceased and the applicant Rishabh can be seen in a scuffle.

24. During the course of investigation, the factum of the PCR call made by the applicant Aarushi Gupta was also verified and it was stated that the PCR call was made around 04:55 a.m. but when the PCR in response reached the place, the deceased had already left.



Analysis

25. Section 306 of the IPC reads as under:

Section 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.*

26. A bare reading of above provision would demonstrate that for an offence under section 306 of IPC, there are twin requirements, namely, suicide and abetment to commit suicide.

27. In ***Randhir Singh v. State of Punjab, (2004) 13 SCC 129*** it was held thus:

“12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 of IPC.”

28. *Prima facie* from the WhatsApp chats placed on record it appears that the deceased was of sensitive nature and constantly threatened the applicant—Aarushi Gupta of committing suicide whenever she refused to talk to him.

29. The sister of the deceased used to request the applicant—Aarushi Gupta to talk to the deceased and promised her that the applicant will not do any wrong to her.



30. The applicants were granted interim protection by this court *vide* orders dated 02.08.2023 and 21.09.2023 respectively, and have joined the investigation since then.

31. If a lover commits suicide due to love failure, if a student commits suicide because of his poor performance in the examination, a client commits suicide because his case is dismissed, the lady, examiner, lawyer respectively cannot be held to have abetted the commission of suicide. For the wrong decision taken by a man of weak or frail mentality, another person cannot be blamed as having abetted his committing suicide.

32. The Hon'ble Supreme Court in case of ***Geo Verghese v. The State of Rajasthan: 2021 SCC OnLine SC 873***, while quashing FIR under Section 306 of IPC, has observed thus:—

“30. If, a student is simply reprimanded by a teacher for an act of indiscipline and bringing the continued act of indiscipline to the notice of Principal of the institution who conveyed to the parents of the student for the purposes of school discipline and correcting a child, any student who is very emotional or sentimental commits suicide, can the said teacher be held liable for the same and charged and tried for the offence of abetment of suicide under Section 306 IPC.

33. It is correct that the deceased had written the name of the applicants in suicide note, but, in the opinion of this Court, there is nothing mentioned, as to the nature of threats in the alleged suicide note written by deceased of such an alarming proportion so as to drive a ‘normal person’ to contemplate suicide.



34. The allegation with respect to applicants teasing the deceased in regards to the failure of his romantic relationship with the applicant–Aarushi Gupta, however, does not appear to be instigation which would amount to abetment of suicide in terms of Section 306 IPC.

35. The factum of the alleged suicide note and whether there was any instigation by the applicants will be seen in trial.

36. *Prima facie*, the alleged suicide note only expressed a state of anguish of the deceased towards the applicants, but it cannot be inferred that the applicants had any intention, that led the deceased to commit suicide.

37. It is trite law that where the court is of the considered view that the accused has joined the investigation and is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided since, a great ignominy, humiliation and disgrace is attached to arrest. [**Ref: *Bhadresh Bipinbhai Sheth v. State of Gujarat : (2016) 1 SCC 152***].

38. The purpose of custodial interrogation is to aid the investigation and is not punitive.

39. In view of the above, this Court is of the opinion that the custodial interrogation of the applicants is not required. It is directed that in the event of arrest, the applicants be released on bail on furnishing a personal bond of ₹50,000/- each with two sureties each of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

a. The applicants shall join and cooperate with the



- investigation as and when directed by the IO;
- b. The applicants will not leave the boundaries of Delhi without informing the IO/ SHO concerned;
 - c. The applicants shall not contact the complainant / witnesses or tamper with the evidence in any manner;
 - d. The applicants shall give their mobile number to the concerned IO/SHO and shall keep their mobile phones switched on at all times;
 - e. The applicants shall provide the address of their residence to the IO/SHO and shall not change the same without informing the concerned IO/SHO.
40. In the event of there being any violation of the stipulated conditions, it would be open to the State to seek redressal by filing an application seeking cancellation of the bail.
41. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the merits of the case.
42. The bail applications are allowed in the aforesaid terms.
43. A copy of this judgment be placed in both the matters.

AMIT MAHAJAN, J

APRIL 16, 2024/HK