

Reserved on: 16.7.2022

Delivered on: 20.7.2022

Court No. - 74

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 4040 of 2022

Applicant :- Siddharth Kappor

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Vikrant Rana

Counsel for Opposite Party :- G.A., Vinay Sharma

Hon'ble Suresh Kumar Gupta,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard Shri Anoop Trivedi, learned Senior Counsel assisted by Shri Vikrant Rana, learned counsel for the applicant, the learned Additional Government Advocate for the State as well as Shri Vinay Sharma, learned counsel for the first informant and perused the record.
3. This anticipatory bail application under section 438 Cr.P.C. has been moved seeking anticipatory bail in Case Crime No. 23 of 2022, under sections- 306, 506 IPC, Police Station Lal Kurti, District Meerut.
4. Brief fact of the case emerges as such that an FIR was lodged by the opposite party no.2 under Section 306 IPC on 12.2.2022 against Pradeep Kumar, Shahzad and one unknown person alleging therein that her husband namely Yogendra Chaudhary borrowed some money in installment from Rajkumar Sirohi, Aastha Finance Company, 2nd Floor near Nandni Bar and Restaurant, Garh Road, Meerut and her husband was paying the said amount in installment, but the aforesaid company and his associates namely Honey and Harish Sonkar demanding more money from her husband and asked him that in case, he does not pay the money to them, they will not spare him and his family members and the said things were told by her husband to her and on account of the same, he lost his mental balance and committed suicide on 11.2.2022. The suicide note was recovered in which the mobile number of the applicant and his father Sri Shashi Kapoor i.e. 9837088231 included and after the said incident, the co-accused Rajkumar Sirohi came to her house on 12.2.2022 between 6.00 am to 7.00 am along with his son Akash Sirohi and unknown persons and left the place with

the words that Yogendra has gone and now they will recover their money from them and they will compel them also to commit suicide. It was further alleged that she was not in a position to give a complaint and the names of the accused persons are written in the suicide note which was found to her has been annexed with the application.

5. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. It is further stated that while studying in class 11th, the applicant came into contact of daughter of opposite party no.2 namely Tanya and friendship developed between each other. On 25.6.2013, the applicant along with daughter of the first informant and other friends went to have lunch at Manssorpur in a car having registration no. UK-08-AA 0874 in the name of father of applicant, which was driven by his driver namely Naveen Chand. After having lunch, while returning to their place, the said car driven by the said driver Naveen Chand was hit by a Truck having registration no. HR-55-AM 4999 which resulted into serious accident and in the said accident, the daughter of the first informant died and the applicant also received injuries.

6. The learned counsel for the applicant further submits that the FIR of the aforesaid incident was lodged by the said driver Naveen Chand at P.S. Daraula, Meerut on 25.6.2013 against the driver of the said Truck which was registered as Case Crime No. 415 of 2013 U/s 279/304A IPC. It is further stated that after investigation, the final report no. 315/2013 dated 10.11.2013 was submitted by the police in the court concerned. It is further stated that after the death of the daughter of the first informant, she and her husband namely Shri Yogendra Singh filed Motor Accident Claim Petition bearing MACT petition no. 794 of 2013 which is still pending, in which the husband alleged in his plaint that the accident in question took place due to rash and negligent driving of the said Truck and the car bearing No.UK-08-AA-0874. Thus, the truck owner is liable to pay compensation to them.

7. The learned counsel for the applicant further states that soon after the aforesaid accident, the husband of the opposite party no.2 started blackmailing and demanding Rs. 10 lacs on the pretext that he will send the applicant behind bars in the case of death of his daughter and also extended the threats of dire consequences, if he does not fulfil his illegal demand. It is further submitted that in the FIR, it is admitted fact that the husband of opposite party no.2 took loan from one Raj Kumar Sirohi who was demanding his money from him. It is further stated that the husband of the opposite party no.2 also took

home loan of Rs. 15 lacs from H.D.F.C. Bank which could not be repaid by him and due to which, he committed suicide on 11.2.2022.

8. It is further stated by the learned counsel for the applicant that the investigating officer during investigation apart from two slips, the investigating officer obtained a copy of alleged draft email dated 4.1.2022 from the mobile phone of the deceased in which the name of the applicant and his father's name was disclosed. It is also submitted that in the said draft mail, he clearly addressed that the Hon'ble Chief Minister is also liable for his suicide.

9. The learned counsel for the applicant submits that there is no instant instigation by the applicant and there is no motive or intention to instigate the deceased for committing suicide on 11.2.2022. Thus, it is clear that the deceased committed suicide after one month and seven days of the alleged draft suicide note in the mobile of the deceased. It is further submitted that a perusal of the FIR and statement, no offence U/s 306 IPC is made out against the applicant. In support of his submissions, he has placed reliance upon the judgement of the Apex Court in the case of **Amalendu Pal @ Jhantu vs. State of West Bengal** in which it was held as under:

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. 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.

13. In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

10. The learned counsel for the applicant further submits that earlier before availing the remedy of anticipatory bail application before this court, the applicant and father of the applicant approached the sessions court and filed the anticipatory bail application which was duly rejected on 21.4.2022. It is further submitted that the investigating officer, who anyhow wanted to arrest the applicant, deliberately or intentionally procured an order U/s 82 CrPC on 29.4.2022. But the said order dated 29.4.2022 never came to the knowledge of the applicant. Therefore, the applicant filed anticipatory bail application on 5.5.2022. It is further stated that it is not the case where the investigating officer obtained the order of N.B.W. and process U/s 82 CrPC prior to filing of the said anticipatory bail application before the court below. The N.B.W. as well as process U/s 82 CrPC was issued against the applicant while the applicant is availing statutory remedy given by the appropriate court. Therefore, the learned counsel submits that the applicant is not an absconder inasmuch the N.B.W. and process U/s 82 CrPC was issued against the applicant during statutory remedy available. It is further submitted that in a catena of judgements of the Apex Court as well as this Court, it has been held that in the intervening period, when the applicant avails his remedy, then only on the basis of process U/s 82 CrPC, the anticipatory bail cannot be denied.

11. Lastly, the learned counsel for the applicant submits that the father of applicant has already been granted anticipatory bail by sessions court concerned having similar allegations vide order dated 21.4.2022. The applicant has no previous criminal history and therefore, he seeks anticipatory bail. He is ready to cooperate in the investigation.

12. Learned A.G.A. as well as the counsel for the first informant vehemently opposed the prayer for anticipatory bail of the applicant and has submitted that the offence is serious in nature. Hence, the application is liable to be rejected. In support of his submission, he relies upon the judgement of the Apex Court in the case of ***Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)*** decided on 10.8.2009 in Criminal Appeal No. 1473 of 2009. The relevant portion of which is being reproduced hereunder:

"10. Section 306 of the IPC reads as under:

"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."

11. From a bare reading of the provision, it is clear that to constitute an offence under Section 306 IPC, the prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence under Section 306 would stand only if there is an "abetment" for the commission of the crime. The parameters of "abetment" have been stated in Section 107 of the IPC, which defines abetment of a thing 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.

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."

12. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, 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 to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

13. Therefore, the question for consideration is whether the allegations levelled against the appellant in the FIR and the material collected during the course of investigations, would attract any one of the ingredients of Section 107 IPC?

14. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the IPC. The meaning of the said word was considered by this

Court in *Ramesh Kumar Vs. State of Chhattisgarh*. Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that 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 (2001) 9 SCC 618 capable of being spelt out. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

15. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in *Ramesh Kumar's case* (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."

13. The counsel for the opposite party has stated that in suicide note, the name of the applicant disclosed. The role of the applicant could not be denied and he extended threats for

committing murder of the deceased several times and as such, the applicant made the deceased pressurize. Due to this, the complainant's husband committed suicide. It is further stated that the name of the applicant is clearly mentioned in the said suicide note. Thus, this is not a case of anticipatory bail and if the applicant is granted anticipatory bail, he might not cooperate in the investigation. It is also submitted that the applicant is an absconder, so benefit of anticipatory bail could not be granted to him.

14. Insofar as the argument of the counsel for the first informant is concerned, the counsel for the opposite party has failed to adduce any evidence that the process U/s 82 CrPC was issued prior to pendency of anticipatory bail application before the learned trial court which was rejected on 21.4.2022 and process U/s 82 CrPC was issued on 29.4.2022. However, the applicant approached this Court on 5.5.2022. Thus, it is admitted fact that the process U/s 82 CrPC was issued after rejection of the anticipatory bail application by sessions court concerned.

15. The law is trite on the point that if any person has filed any anticipatory bail application before the learned court below seeking anticipatory bail showing his reasonable apprehension of arrest in a case where the allegations of the prosecution prima facie do not corroborate with the material available on record and his anticipatory bail application is rejected, he has got a right to approach the High Court for such anticipatory bail and if in the interregnum period any proclamation u/s 82 & 83 Cr.P.C. is issued, it may be considered as a circumventive exercise being taken by the Investigating Officer. No one can be restrained from taking legal recourse strictly in accordance with law and such legal right may not be prevented even if any process is adopted by any authority which is not permissible under the law.

16. Therefore, in this matter, there is no bar to interfere the anticipatory bail application even after issuance of process U/s 82 CrPC.

17. Considering the nature of accusation as well as the fact that the applicant has no criminal antecedent and without expressing any opinion on the merits of the case, I am of the view that in this matter as the aforesaid suicide note was written on 4.1.2022 and the deceased committed suicide on 11.2.2022, there is no instant instigation or abetment to commit suicide and, as such, the applicant is entitled to be released on anticipatory bail in this case.

18. In the event of arrest, the applicant- **Siddharth Kappor**

involved in the aforesaid crime shall be released on anticipatory bail till the submission of police report, if any, under section 173 (2) Cr.P.C. before the competent court on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station concerned with the following conditions:-

(i) the applicant shall make himself available for interrogation by a police officer as and when required;

(ii) the applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police office;

(iii) the applicant shall not leave India without the previous permission of the Court and if he has passport the same shall be deposited by him before the S.S.P./S.P. concerned.

In default of any of the conditions, the Investigating Officer is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

The Investigating Officer is directed to conclude the investigation of the present case in accordance with law expeditiously preferably within a period of three months from the date of production of a certified copy of this order independently without being prejudice by any observation made by this Court while considering and deciding the present anticipatory bail application of the applicant.

The applicant is directed to produce a certified copy of this order, before the S.S.P./S.P. concerned within ten days from today, who shall ensure the compliance of present order.

19. In view of the aforesaid terms, the application is **disposed of.**

Order Date :- 20.7.2022

Shravan