

Madhya Pradesh High Court

Brajesh Patel vs The State Of Madhya Pradesh on 13 May, 2022

Author: Vishal Mishra

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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VISHAL MISHRA
ON THE 13th OF MAY, 2022

MISC. CRIMINAL CASE No. 22157 of 2022

Between: -

BRAJESH PATEL S/O RAMCHARAN PATEL,
AGED ABOUT 25 YEARS, OCCUPATION:
PRIVATE JOB R/O VILLAGE UDAYPURA P.S.
GARHAKOTA TEHSIL GARHAKOTA, DISTRICT
SAGAR (M.P. (MADHYA PRADESH)

(BY SHRI B.K RAJAK- ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH
POLICE STATION BARELA DISTRICT JABALPUR
M.P. (MADHYA PRADESH)

(BY SHRI B.S KUSHWAHA- ADVOCATE)

This application coming on for admission this day,
following:

ORDER

This is the First bail application under Section 439 of Cr.P.C filed by the applicant for grant of bail.

The applicant has been arrested on 12/04/2022 by Police Station-Barela District Jabalpur in connection with Crime No.165/2022 for the offence punishable under Section 306 of Indian Penal Code.

It is submitted that he has been false implicated in the case. He has not Signature Not Verified SAN committed any offence in any manner. As per the prosecution story with Digitally signed by PRARTHANA SURYAVANSHI respect to missing person registration No.21/22 given at Police Station- Barela, Date: 2022.05.18 12:51:32 IST an enquiry was conducted and on 11/03/2022 at about 05:00 PM a dead body was found at Navghat, Gwarighat, Jabalpur. A merg was got registered and the postmortem of the body was conducted. During investigation it was found that the deceased as well as the applicant were having love affair and thereafter, the girl has committed suicide. The statements of witnesses under Section 161 of Cr.P.C has been recorded and thereafter the crime was

registered under Section 306 of IPC against the present applicant. It is submitted that even the statements is being given prior to death that she is committing suicide because she is tired of living and there is no force or abetment being given by the present applicant or her family members including her parents. Therefore, no case is made out against the present applicant. It is further submitted that there is nothing on record to show that offence under Section 306 of IPC is made out because there are no ingredients of 107 of IPC. To establish the ingredient of Section 306 of IPC, the ingredients of Section 107 of IPC i.e abetment to suicide are must and are determining factor. He has further placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Gurucharan Singh Vs. The State of Punjab reported in 2020 (10) SCC 200 and Sanju @ Sanjay Singh Sengar vs State Of M.P. reported in 2002 Vol.5 SCC 371 in support of his submissions. The Hon'ble Supreme Court in the case of Mahendra K.C. Vs. State of Karnataka and another reported in (2022) 2 SCC 129 has considered the provisions of Section 107 of IPC and held as under:-

"The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal Signature Not Verified SAN omission. Instigation is to goad, urge forward, provoke, incite or Digitally signed by PRARTHANA SURYAVANSHI encourage to do "an act".

Date: 2022.05.18 12:51:32 IST The aforesaid aspects are missing in the present case, therefore, no offence under Section 306 of IPC is made out. It is further submitted that the investigation is over and the charge-sheet has been filed in the matter. Applicant is the first offender and the aforesaid aspect can be verified. The applicant is in custody since 12/04/2022. There is no further requirement of custodial interrogation of the applicant. He is ready to abide by all the terms and conditions that may be imposed by this Court while considering his bail application. In view of the aforesaid, he prays for grant of bail.

P e r contra, learned counsel appearing for the State has vehemently opposed the application stating that during investigation it was found that the applicant was having a love affair with the deceased and on refusal to marry her, she has committed suicide. The body of the deceased was also found at the instance of the present applicant as is reflected from the statements of the family members which have been recorded. This goes to show the implication of the present applicant in commission of offence. It is argued that the applicant was well aware of the fact that the girl is going to commit suicide and the place of incident was also known to him but despite of the same he has not tried to stop him. Counsel appearing for the State could not dispute the fact that there are no direct allegations of instigation against the present applicant to the girl to commit suicide. Filing of charge sheet as well as applicant is the first offender are also not disputed by the State Counsel.

Heard the learned counsel for the parties and perused the record. T he Hon'ble Supreme Court in the case of Sanju @ Sanjay Singh Signature Not Verified SAN Sengar (supra) has considered the aspect of Section 107 of IPC with Section Digitally signed by PRARTHANA 306 of IPC and has held that the basic ingredient for offence under Section 306 SURYAVANSHI Date: 2022.05.18 12:51:32 IST of IPC is fulfillment of the condition mentioned under Section 107 of IPC.

The Hon'ble Supreme Court in the case of Mahendra K.C (supra) has define in paras 24, 25 and 27 as under:-

24. The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. In *Ramesh Kumar v. State of Chhattisgarh* 9, a three-judge Bench of this Court, speaking through Justice RC Lahoti (as the learned Chief Justice then was), observed:

â20. 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.

25. A two judge Bench of this Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi 10)*, speaking through Justice DK Jain, observed:

â19. As observed in *Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088]*, 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 âinstigationâ 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 Signature Not Verified SAN

(ii) that the accused had the intention to provoke, urge or encourage Digitally signed by PRARTHANA the deceased to commit suicide while acting in the manner noted above. SURYAVANSHI Date: 2022.05.18 12:51:32 IST Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self- protection or an escapism from intolerable self.â

27. While adjudicating on an application under Section 482 CrPC, the High Court in the present case travelled far away from the parameters for the exercise of the jurisdiction. Essentially, the task before the High Court was to determine whether the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety did or did not prima facie constitute an offence or make out a case against the accused.

Considering the overall facts and circumstances of the case and the judgment passed by the Hon'ble Supreme Court in the aforesaid cases, without commenting upon the merits of the case, this application is allowed, subject to verification of the fact that applicant is a first offender. The applicant be released on bail on furnishing surety bond of Rs.50,000/- (Rupees Fifty Thousand Only) with one local surety in the like amount to the satisfaction of trial Court.

This order will remain operative subject to compliance of the following Signature Not Verified SAN Digitally signed by PRARTHANA SURYAVANSHI Date: 2022.05.18 12:51:32 IST conditions by the applicant :-

1. The applicant will comply with all the terms and conditions of the bond executed by him;
2. The applicant will cooperate in the investigation/trial, as the case may be;
3. The applicant will not indulge himself in extending 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 the Police Officer, as the case may be;
- 4 . The applicant shall not involve in any other offence, in case the applicant indulge in any other criminal case the benefit of bail as extended by this Court shall automatically cancelled;
5. The applicant will not seek unnecessary adjournments during the trial;
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be;
7. The applicant will inform the concerned S.H.O. of concerned Police Station about his residential address in the said area and it would be the duty of the Public Prosecutor to send E-copy of this order to SHO of concerned police station as well as Superintendent of Police concerned who shall inform the concerned SHO regarding the same.

In view of the COVID-19, jail authorities are directed to follow the Covid-19 protocol as per the Government guidelines before releasing the applicant on bail.

Application stands allowed and disposed of.

Signature Not Verified SAN Certified copy as per rules.

Digitally signed by PRARTHANA SURYAVANSHI Date: 2022.05.18 12:51:32 IST (VISHAL MISHRA) JUDGE Prar Signature Not Verified SAN Digitally signed by PRARTHANA SURYAVANSHI Date: 2022.05.18 12:51:32 IST