

HIGH COURT OF ORISSA, CUTTACK

ABLAPL No.6554 of 2021

(In the matter of applications under Section 438 of the Criminal Procedure Code, 1973)

Prof. Dr. Sanjiv Mittal ... **Petitioner**

Versus

State of Odisha & Others ... **Opposite Parties**

For Petitioner : M/s. Kousik Ananda Guru &
Tushar Kumar Mishra, Advocates

For Opp. Parties : Mr. Manoj Kumar Mohanty
Additional Standing Counsel

M/s. H.S. Mishra, A.K. Mishra &
R.Dash (For Informant-Son)

Mr. Srinivas Mohanty
(For Informant-wife of deceased)

PRESENT

THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI

Date of Hearing: 17.06.2021 **Date of judgment: 02.07.2021**

S. K. Panigrahi, J.

1. The present petitioner has filed the instant Anticipatory Bail application under Section 438 of Cr.P.C. corresponding to Burla P.S. Case No.251 of 2021 pending in the Court of the learned S.D.J.M, Sambalpur. The petitioner herein has been accused in connection with alleged commission of offences punishable under Section 306 read with Section 34 of the I.P.C. Prior to the present Application, the petitioner approached the court of the learned Sessions Judge, Sambalpur in ABLAPL No.81 of 2021, wherein vide

order dated 24.05.2021, the learned Sessions Judge rejected the said pre-arrest bail petition.

2. Shorn of unnecessary details, the facts of the present case are that the deceased one Mr. Dinabandhu Mishra was serving as a Technical Assistant (Computer) on contractual basis at Sambalpur University for about 27 years. The petitioner herein was appointed as the Vice-Chancellor of Sambalpur University on 25.01.2021 and has been discharging his duties and responsibility since then. On 20.04.2021, the deceased wrote a letter to Registrar, Sambalpur University wherein he stated that the petitioner had called him on 15.04.2021 to question him regarding leaking of some information to the press about burning of cut wood. Further, the letter states that the petitioner had called upon the deceased on the unfortunate day of 20.04.2021 wherein the deceased claimed that the petitioner had used filthy language and made false allegations against him regarding theft of some University property without any basis. The deceased also claimed that the behaviour of the Vice-Chancellor is not tolerable to him and therefore he would commit suicide and upon his death, the petitioner, one Mr. Abinash Kar and Prof. Biswajit Satpathy are to be held responsible.

3. Learned counsel for the petitioner submitted that these facts and circumstances do not, in any way, indicate that the alleged act would constitute abetment to commit suicide. The ingredients to

constitute the said offences are completely absent in the present case. He also contended that there is complete absence of any sort of instigation or any positive move on the part of the petitioner causing the deceased to commit suicide. Although the incident is mournful and very unfortunate, the petitioner cannot be prosecuted for the offences punishable under Sections 306 of the Indian Penal Code, 1860. It was also submitted that the petitioner is absolutely innocent and has been falsely implicated in this case on the ground that he has abetted the suicide committed by the deceased. It is also argued that the ingredient of abetment as laid down in Section 107 is completely absent in this case and as such Section 306 of the Penal Code, 1860 is not attracted. Lastly, during the course of arguments learned Counsel for the Petitioner has also brought to the notice of this Court that the deceased on an earlier occasion on 25.03.2014 had given the representation to Sri S.C. Jamir, the then Governor of Orissa, threatening for self-immolation if his service was not regularised immediately. Further, on 7.09.2015 he sent a representation to the then Vice-Chancellor of Sambalpur University stating therein that he wanted to end his life. In yet another letter dated 24.07.2018 addressed to the then Vice-Chancellor, Prof. Dipak Behera, the deceased had categorically stated that he was totally in an unbalanced state of mind and he reminded about his repeated message describing his mental status

through Whatsapp and threatened self-immolation. Thus, in the past, he had frequently threatened the authority to commit suicide which reflects his vulnerable state of mind and conduct in general. Hence, the petitioner cannot be attributed to the alleged abatement of suicide. This Court should not be persuaded by the alarming and hyperbolic verbiage used in the media and by the informant. Accordingly, the prayer for anticipatory bail may be allowed.

4. Per contra, the learned counsel appearing for the State has vehemently opposed the anticipatory bail application and has submitted that investigation is ongoing and the suicide letter/note itself states that the accused persons including the present petitioner used to create mental pressure on the deceased which has resulted in his committing suicide. The learned counsel for the State further contends that the contents of the First Information Report (FIR) and the investigation conducted by the police so far sufficiently establishes that the accused persons are responsible for abetting suicide of the deceased. It is clear from the plain reading of the Case Diary that the present case is not a *prima facie* exclusion of guilt case hence falls under the ambit of Section 306 of I.P.C.

5. The learned Counsel appearing for the informant submitted that on the morning hour of 15.4.2021, the Vice-Chancellor/Petitioner herein called the deceased to his cabin and alleged that he had given information to the press regarding the huge burning of cut

wood as extracted from the small forest in front of the administrative building which is false and baseless. Further, on 20.04.2021 at about 9.10 AM, the deceased was called to the chamber of the Vice-Chancellor (VC) and said to have some discussions regarding theft of some materials from the Hostel and thereafter the petitioner angrily called him "Get out of my chamber." After that, at about 9.45 AM, the deceased informed the matter in writing to the Registrar indicating his intention to commit suicide due to harsh language used by the VC and making false allegation against him. Unfortunately, on the same date at about 10.30 AM he poured some inflammable liquid over his head and sets himself ablaze near the chamber of the VC. Some members of the University staff tried to douse the fire with the help of fire extinguisher and immediately took him to VIMSAR, Burla for medical treatment and then VIMSAR, Burla referred the case to SCB Medical College & Hospital, Cuttack. On his way to Cuttack the deceased eventually breathed his last near Angul on 20.04.2021. He, further, submitted that the rude behaviour of the petitioner, his arbitrary attitude has clearly inflicted a deep scar on the psychology of the deceased which triggered him to take such a drastic step of self-immolation and died an excruciatingly painful death. Despite so much of subjective narrative created by the petitioner's counsel, the petitioner's action

provoked a strong and shocking emotional response in terms of a unique violence against self which cannot be said to be in vacuum.

6. Heard learned Counsel for the parties in extenso, and perused the case diary and other relevant records. The petitioner has been charged with Section 306 read with Section 34 of the I.P.C. Generally, while considering an application for anticipatory bail the factors to be considered are; (i) the nature and gravity of the accusation, (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence, (iii) the possibility of the applicant to flee from justice, (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, (v) the character, behaviour, antecedents, means, position and standing of the accused in the society and (vi) reasonable apprehension of the witnesses being tampered with or the investigation being interfered with.

7. More than four decades ago, in a celebrated judgment in ***State of Rajasthan v. Balchand***¹, Krishna Iyer, J. pithily reminded that the basic rule of our criminal justice system is “bail, not jail”. These words of Krishna Iyer, J. are not isolated silos in our jurisprudence,

¹(1977) 4 SCC 308

but have been consistently followed in judgments of the Hon'ble Supreme Court of India for decades.

8. Under Section 438, the question which vexes the court seized of the matter is whether a person, if arrested, on an accusation of having committed a non-bailable offence, can be released on bail. The apprehension of such an arrest is possible only when the person is being sought for arrest by the police or other authority. At this juncture, a person cannot move the Courts under Section 437 or under Section 439 because he is not in custody. But he can very well approach the High Court or the Court of Session under Section 438 for an appropriate order. The High Court or the Court of Session in its turn is competent to examine the case of the person and his suitability to be enlarged on bail after the arrest and then only an order under Section 438 is passed.

9. Section 438 of the Code makes a special provision for granting "anticipatory bail" in the Code of Criminal Procedure, 1973. The expression "anticipatory bail" has not been defined in the Code. But as observed in **Balchand Jain v. State of M.P.**², anticipatory bail means a bail in anticipation of arrest. The expression "anticipatory bail" is somewhat of a misnomer inasmuch as it is not as if bail presently granted is in anticipation of arrest. Where a competent

²(1976) 4 SCC 572

court grants “anticipatory bail”, it makes an order that in the event of arrest, a person shall be released on bail forthwith. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative.

10.With the above background, it becomes imperative to rely on the leading case of **Gurbaksh Singh Sibbia v. State of Punjab**³ The Full Bench of the High Court summarised the law relating to anticipatory bail as reflected in Section 438 of the Code and laid down certain principles as to when discretionary power to grant anticipatory bail may be exercised by a Court. The Hon’ble Apex Court partly disagreeing with the judgment of the High Court held that the legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail since it felt, *firstly*, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and *secondly*, because the intention seemed to be to allow the courts higher up in the echelon, a somewhat free hand in the grant of relief in the nature of anticipatory bail.

11.The offences brought out against the petitioner is Section 306 of I.P.C. which may be reproduced below;

³(1980) 2 SCC 565

“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.”

Further, it provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished with a sentence which may extend up to 10 years. However, the abatement is not defined under the Section 306 of Penal Code, hence one has to take the aid of Section 107 of Penal Code, 1860. Section 107 of the I.P.C. reads 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.”

In order to prove the charge of abetment, the accused must have instigated a person to do a thing, in this case, to commit suicide or intentionally aided the deceased to commit suicide. If one goes by the suicide note of the deceased, one would find that the deceased does not state how the appellant had instigated or intentionally aided him in committing suicide. The two terms “instigates”, and “intentionally aids”, have been intentionally used in Section 107 of Penal Code, 1860 would necessarily require *mens*

rea on the part of the accused in order to hold him guilty of the offence of abatement of suicide.

12. The Hon'ble Supreme Court while dealing with the interpretation of Section 306 in **M. Arjunan v. State**⁴ has succinctly held that;

“7. The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

The Hon'ble Supreme Court while dealing with the concept of abetment has expressed that the component of *mens rea* must shine forth, as was held in the case of **S.S. Chheena v. Vijay Kumar**

Mahajan⁵:

“25. 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 this Court is clear that in order to convict a person under Section 306 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.”

⁴(2019) 3 SCC 315

⁵(2010) 12 SCC 190

The Apex Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)**⁶ also had another occasion to deal with the aspect of abetment. The Court dealt with the dictionary meaning of the words “instigation” and “goadings”. It is opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's propensity/pattern to commit suicide are different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any strait jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

In the case of **State of W.B. v. Orilal Jaiswal**⁷ the Hon'ble Supreme Court dealing with the concept of relative self-esteem held that-

“17. ... The court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it [appears] to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

⁶(2009) 16 SCC 605

⁷(1994) 1 SCC 73

13. 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. It must also be noted that deceased had on previous occasions prior to the appointment of the petitioner also resorted to many agitational activities like dharnas, gheraus and hunger strikes in the University. The deceased had threatened self-immolation, suicide as well as made requests for euthanasia on previous occasions to the erstwhile Vice-Chancellors and Chancellors in order to pressurise the administration in the past demanding regularisation of service. Be that as it may, in the present facts of the case, a case for securing the custody of the present petitioner is not made out. Whether or not, an offence is disclosed under Section 306 of the Indian Penal Code, 1860 or not,

is a matter which will be considered by the trial Court at the appropriate stage.

14. The Hon'ble Supreme Court in a similar case in the case of **Bhausahab v. State of Maharashtra**⁸ had granted anticipatory bail to the accused who had allegedly abetted suicide and was named by the deceased in the suicide note on the condition that the accused shall cooperate with investigation. Furthermore, in **Madan Mohan Singh v. State of Gujarat**⁹, the Apex Court has opined that in so far as Section 306 IPC is concerned, merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for harnessing a charge under Section 306 of the IPC. Thus, such cases have been held to be still falling short of a proper allegation. It would have to be objectively seen whether the allegations made could reasonably be viewed as proper allegations against the appellant/accused to the effect that he had intended or engineered the suicide of the concerned person by his acts, words etc.

15. The human sensitivity differs from person to person. It is unfortunate that such a tragic episode of suicide had taken place in the case of the deceased. But the question remains to be answered

⁸(2018) 3 SCC 221

⁹(2010) 8 SCC 628

is whether the petitioner herein can be connected with such unfortunate incident in any manner, was there any motive or positive move on the part of the accused to abate such suicide etc. which can be established after a thorough inquiry followed by a proper trial.

16. Considering the facts and circumstances and the materials so far collected by the prosecuting agency, it appears that if the present petitioner is enlarged on anticipatory bail at this stage, it will not affect the investigation adversely. The petitioner is a noted educationalist and he is a Vice-Chancellor of a reputed University throughout this period. No case has been made out warranting the petitioner's custodial interrogation and no reasonable apprehension lies that if the petitioner is released on bail, he is likely to abscond, therefore this court allows his prayer for anticipatory bail.

17. Accordingly, this pre-arrest bail application is allowed as follows:
In case the petitioner is arrested in connection with Burla P.S. Case No.251 of 2021, he shall be released on bail forthwith on his executing bond of Rs.25,000/- (Rupees twenty-five thousand only) with two sureties each of the like amount to the satisfaction of the learned court in seisin over the matter with further condition that the petitioner shall cooperate with the investigation and shall not influence, coerce or intimidate any witness.

18. It is made clear that the learned Court in *seisin* over the matter, shall decide the case on its own merits in accordance with law, uninfluenced by the observations made in this order. As a sequitur, any pending applications are disposed of in light of the above.

(S.K.Panigrahi)
Judge



Orissa High Court, Cuttack
The 2nd day of July, 2021/AKK/LNB/AKP