

(2000) 12 DEL CK 0086

Delhi High Court

Case No: Criminal Misc. (M) 4184 of 2000

Roop Kishore Madan

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Dec. 14, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438, 482
- Penal Code, 1860 (IPC) - Section 107, 304, 306

Citation: (2001) CriLJ 1219 : (2001) 3 RCR(Criminal) 26

Hon'ble Judges: R.S. Sodhi, J

Bench: Single Bench

Advocate: D.C. Mathur and Sunil Sethi, for the Appellant; M.S. Butalia, for the Respondent

Final Decision: Allowed

Judgement

R.S. Sodhi, J.

This Criminal Misc. (Main) 4184/2000 is a petition wherein the petitioner has prayed for quashing of FIR No. 1088/96, Police Station, Srinivaspuri, u/s 306 IPC and proceedings emanating there from. The facts of this case, as stated in the FIR, stem from the statement of Mrs. Linda Brady, resident of 179-C, Pocket-C, Sidhartha Extension, New Delhi who stated that she was residing at above address and doing her own publication business. On 18.10.96 she left her house at about 10.00 O'clock by Laxi for work. Her daughter, Sharon Brady, was alone in house. Her son, Trevor had left for his work. She returned back to her house around 10.30 p.m. and found her daughter was lying dead on bed. She talked to her daughter on phone around 3.30 p.m. She was normal. A suicide note was found which had been handed over by her son, Trevor to the police. Trevor had told her that when he returned around 8.00 p.m. the house was locked. There were three keys of the house one was with her, second was with her son and the other was with her daughter. The police had come to the spot. She requested to do the needful.

2. It is the case of the petitioner that this matter had come up before this Court earlier when this Court had the opportunity to deal with the matter in respect of bail and it appears that by an elaborate order dated 27.11.1996, the learned Judge had made the following observations:

"On 18th October, 1996, one Mr. Brady informed the police at about 10.50 P.M. that his daughter had died in H.No. 179-C, Sidhartha Extension, New Delhi. The deceased Sharson Brady was the daughter of Andrew Brady and Ms. Linda Brady. Andrew Brady and Ms. Linda Brady were, however, living separately as their marriage had been dissolved by a decree of divorce. Mr. Brady was informed by his son that Sharon was hanging with fan and on receipt of this information, he reached the house at about 9.30 p.m. where he found his daughter dead. Linda Brady came back home at about 10.30 p.m. and she claimed that she had spoken to the deceased at about: 3.30 p.m. on that day and She had appeared to be normal. A suicide note was alleged to have been found which was handed over to the police by Trevor ,brother of the deceased. Statement of Linda Brady was recorded by the police at about 11.45 a.m. FIR was recorded on 22nd October, 1996 on the basis of the earlier statement of Linda Brady recorded on 19th October, 1996 at 11.45 a.m. The suicide note alleged to have been left by the deceased reads as under :-

"TO WHOMSOEVER IT MAY CONCERN"

"I am holding Roop Madan responsible or my death. Yes I was aware of his marriage but it's out of my patience, my physical and mental ability to carry on with him any more. He promised to marry me but won't do so now because he just cannot divorce her. He used, abused and emotionally black mailed me. He never once was interested in ever marrying me. Now after I" am dead and gone he would not be able to denude me any further. I also hold him responsible for the death of my two children. He killed them to have a child with her. After the abortion, I was mentally tortured by him and I am actually sick of living in this world. If he is also living and sharing it with her, I rather die. I hope Roop has a conscience and ultimately leaves her. If he still doesn't after my death, then I believe this world is not worth living in for people like him will continue exploiting women other than their wife. I hate you Roop for all the wrongs you have done to me. I will see you in hell."

Sd/-

(SHARON BRADY)

P.S. I love you Roop more than my life. (Isn't it ironic)".

3. On the basis of the suicide note, case u/s 304 was registered by the police and apprehending arrest on the basis of the said FIR, the petitioner filed this petition for being admitted to anticipatory bail.

4. The contention of learned counsel for the petitioner is that there was no question of the petitioner having abetted the commission of suicide as he had neither

instigated the deceased to commit suicide nor he had made a willful misrepresentation of any fact which might have instigated the deceased to commit suicide. It is the contention of Mr. Mathur that even assuming that the petitioner had promised to marry the deceased, he could not marry her because he was already married and the deceased was aware of his earlier marriage. He, Therefore, submits that it is a case of frustration in life and not an abetment and he cannot be arrested only because the deceased in frustration has committed suicide.

5. Mr. Sareen, Additional Public Prosecutor, however, on the other hand, has submitted that it is a clear case of misrepresentation inasmuch as the petitioner misrepresented the deceased that he would marry her by divorcing his wife but when he did not divorce his wife, the deceased committed suicide and it was, Therefore, on account of misrepresentation of the petitioner that this act has been committed by the deceased which, according to him, is clearly covered by Section 107/306 of the Indian Penal Code. According to him investigation be yet to be carried out and anticipatory bail should be granted only in exceptional cases. He has referred to the judgment reported as P.K. Ruia v. State, 1995 (2) CCC 122 in ; support of his contention that considering the seriousness of the charge, the petitioner should not be admitted to bail.

6. In P.K. Ruia v. State the facts were that the petitioner had entered into a conspiracy with the Manager of the Bank to commit fraud and cheat the bank and in pursuance thereof, 94 public limited companies were floated and the capital was subscribed in a questionable manner. All these companies had the petitioner as their Chartered Accountant. The petitioner and the Manager were very close to each other and in furtherance of the conspiracy they caused a loss of about Rs. 25 lakhs to the bank in the year 1995 by manipulating the accounts in the bank. Big transfers involving the said public limited companies running into crores of rupees in a single day came to the light although in all those accounts amounts standing to the credit was normally in hundreds. It was on these facts that the learned Single Judge of this Court while considering the anticipatory bail application of the petitioner held that as the allegations were serious and the petitioner will require to be interrogated, it was not proper, nor in the interest of investigation, to release him on bail.

7. In my view, that judgment will not be of any assistance to the prosecution as it was pronounced on the peculiar facts of that case. It nowhere lays down the proposition that anticipatory bail cannot be granted even in those cases, where the accused has been able to show to the court that he has been falsely implicated.

8. Abetment has been defined in Section 107 of the Indian Penal Code as under :-

In terms of Section 107 of the Act, Therefore, abetment is not only instigating a person to do a particular act but it also included a willful misrepresentation or willful concealment of a material fact which he was bound to disclose. Whether there was any misrepresentation by the petitioner of any material fact which has instigated the

deceased to commit suicide and whether there is any likelihood of the petitioner fleeing from justice and tamper with evidence, in case he is released on bail are some of the questions which may have to be answered in this case.

9. It was held by the Supreme Court in *Gurbax Singh Sibbia v. State of Punjab*, AIR 1986 SC 1632 that an order of anticipatory bail does not take away from the police their right to investigate into the charges made or to be made against the person released on bail. The following observations" of the Supreme Court will be helpful for true interpretation of Section 438 of the Code.

"We find a great deal of substance in Mr. Tarkunde"s submission that since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restriction on the scope of Section 438, especially when no such restriction in the terms of that Section 438, is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by a legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."

10. Power u/s 438 of the Code to grant a bail is of an extra ordinary character as anticipatory bail is to be granted only before arrest whereas bail is granted after arrest Police custody is an inevitable concomitant of arrest for non-balance offences. An order of anticipatory bail constitutes, so to say, an issuance against police custody following upon arrest for offence in respect of which the order is issued. Law Commission of India in its 41st report recommended the necessity of introducing a provision in the code enabling the High Court and the Court of Sessions to grant anticipatory bail. It was observed by the Law Commission that necessity of granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse the liberty while on bail, there seems no justification to require him first to submit to custody, remain imprisoned for some days and then apply for bail.

11. In the present case the deceased was aware of the petitioner being married. In spite of her knowing that he was married, she continued to have affairs with him. At this stage, it will not be proper for me to go into the question as to whether the petitioner had promised the deceased to marry her by divorcing his wife, however, from the suicide note alleged to have been written by the deceased, one thing appears to be clear that the deceased, one thing appears to be clear that the deceased wanted the petitioner to leave his wife. As an apparent from the suicide note even after her death, she wanted the petitioner to leave his wife. Prima facie, it appears to be a case where the deceased was frustrated due to the petitioner not leaving his wife. It will not be proper for me at this stage to give any opinion as to whether the allegations made in the suicide note will amount to an abetment to suicide but in my view when the deceased had opted to continue to have relationship with a married man, she should have prepared herself to live with the situation.

12. As held by the Supreme Court in *Gurbax Singh v. State (surpa)*, there are several considerations, too numerous to enumerate, the combined effect of which must weigh with the Court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with the "larger interest of the public or the State" are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is of the egoistic purposes for the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

13. In this case, the suicide by the deceased may be on account of frustration or it may be on account of the alleged misrepresentation by the petitioner for not divorcing his wife. However, in case two views are possible, in my view, benefit of the view favourable to the accused should be preferred by the court. The petitioner has a family and is a permanent resident of Delhi. The case is almost entirely based upon the alleged suicide note and in case he is released on bail, in my view, he is not likely to flee from justice and tamper with evidence.

14. For the foregoing reasons and without, in any manner, commenting upon the merits of the case. I direct that in the event of arrest, the petitioner will be released on bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of the arresting officer/superior officer.

15. The petitioner will surrender his passport with the investigating officer and shall not leave this country without prior permission of the court concerned. He will also

make himself available for investigation as and when required by the investigating officer and shall not make any attempt to influence the witnesses or tamper with evidence.

16. Any observation made in this order shall not have any effect on the merits of the case."

17. The law on the subject has been discussed at length in various judgments of the High Courts and the Supreme Court in *Hira Lal Jain v. State*, 2000 3 AD 121. It was held that on reading of clause "First" of Section 107 IPC, it is clear that a person who instigates other to do a thing, abets him to do that thing. A person is said to instigate another when he incites or otherwise encourages another to commit a crime. In the present case, a reading of the so-called, suicide note does not remotely suggest that the petitioner had incited the deceased to commit suicide. There is no material on record to show that the ingredients of offence of abetment had been satisfied and, Therefore the offence u/s 306 IPC cannot be said to have been committed. In *Taposi Chakervarti v. State*, 2000 3 AD 233, this Court has elaborately gone into what are the ingredients necessary to satisfy an offence u/s 304 IPC.

18. Having, Therefore, given my careful thought to the material on record and the law enunciated. I am of the view that Criminal Misc. (Main) 4184/2000 deserves to be allowed. I, Therefore, allow this petition and quash FIR No. 1088/96, Police Station, Srinivaspuri, u/s 306 IPC and all proceedings emanating therefore.