

Court No. - 67

Case :-CRIMINAL MISC. BAIL APPLICATION No.-39864 of 2020

Applicant :- Kunal

Opposite Party :- State of U.P.

Counsel for Applicant :- Pandey Balkrishna

Counsel for Opposite Party :- G.A., Raghav Ram

Hon'ble Rahul Chaturvedi,J.

Heard Shri Pandey Balkrishna, learned counsel for the applicant; Shri Raghav Ram, learned counsel for the informant, learned A.G.A. for the prosecution and perused the records of the case.

Powers of this Court U/s 439 Cr.P.C. has been invoked by the applicant KUNAL, who is in jail since 08.07.2020 in connection with Case Crime No. 169 of 2020 U/s 306, 504, 507 I.P.C. Police Station Kydganj, Prayagraj.

Learned Counsel for the applicant submits that the applicant has been falsely implicated in the present case by mother of the deceased. F.I.R. came into existence on 04.07.2020 against sole named accused KUNAL. As per the text, the informant is mother of the deceased. The named accused, for the last 15 days is constantly calling upon her on mobile and hurling filthy abuses and extending all sorts of threats to her. Not only this, the applicant has posted objectionable pictures with her minor daughter and floated them on Social media, Instagram etc. and abusive messages just to insult and disgrace her minor daughter. Accused's call details

are saved on her mobile phone. Her daughter was facing all sorts of canards floated by the applicant and resultantly she has undergone deep depression and eventually, she committed suicide by hanging herself by neck and took her last breath on 06.07.2020 in a local private hospital.

Submissions of Shri Pandey Balkrishna could be formulated herein below:-

(A). The name of deceased is Chandra. It was urged that there was infatuation of the applicant qua that girl. Sensing this the mother/informant settled her marriage about three months back with one Chhotu. Since the girl as well as boy were minor and it was agreed between parent of both the parties that soon after they would attain their majority, formal marriage would be solemnized.

Infuriated by this settlement/arrangement of marriage with Chhotu, the applicant called Chhotu through conference and disclosed him, his relations with deceased, Not only this, the applicant also threatened the deceased regarding dire consequences about 8-10 days back. The applicant is also extending threats and abusive languages to the informant (mother of deceased).

On this, learned counsel for the applicant tried to persuade the Court that since applicant and deceased were in 'relationship' and

when mother fixed the marriage with some other person, then left with no option, poor committed suicide by hanging herself.

(B). It was also contended that there is nothing on record to suggest that applicant at no point of time has ever abetted or goaded the deceased to self-immolate herself and thus do not fall within purview of Section 306 or 107 I.P.C.

Per contra, Shri Raghav Ram, learned counsel for the informant and learned A.G.A. vehemently refuted the submissions advanced by learned counsel for the applicant. It was urged that applicant is a rank ruffian. In her 161 Cr.P.C. statement Ms. Mona Devi discloses that she is widow. Applicant is in distinct relationship. He, for last few years or so, is teasing her daughter against her wish; not only this, extending threats to her. She shared all her sad-experiences with her poor mother. In order to save the honour and dignity of her daughter, she settled her marriage with one Chhotu, who too was minor at that time. It was also decided that soon after they become major, formal marriage would be solemnized. This news reached to the applicant, who got infuriated and revengeful. He contacted Chhotu on phone, disclosed her so-called relationship with deceased and threatened him for dire-consequences. Not only this, for last 8-10 days, he was constantly blackmailing her daughter that he would make her “so-called” relationship public and defame her. Her daughter undergone deep-depression and on 04.07.2020

she hanged herself by neck by saree. In a precarious condition she was admitted in local private hospital and struggled for her life but lastly on 6.7.2020 she died. The action of applicant falls within four corners of Section 306 and 107 I.P.C. and thus the applicant has committed the heinous offence of abetting to commit suicide after blackmailing her.

Heard rival submissions and perused the bail application/ affidavit and the annexures carefully.

As per the poor widow mother's version as in the FIR, it is the applicant who initially blackmailed her minor daughter. It is just possible that, he might have taken some snaps of her daughter and thereafter started twisting her arm. Deceased girl might be dancing on the tune of applicant. The mother has settled her daughter's marriage with some other boy, Chhotu, which was unacceptable to the applicant, Kunal and by way of retaliation, he has made all the pictures/snaps taken with the deceased daughter, public over Social-media, Instagram etc. This action on the part of applicant with the sole objective to defame/disgrace her so that her marriage may be dissolved before being solemnized. No self-styled 'lover' would defame her 'beloved' publicly on Social-media, as canvassed by learned counsel for the applicant. She is helpless girl, who is in her minority, lost her father and the applicant who is in the distinct relationship has exploited these adverse situation of

for his benefit and when failed in his nefarious objective, then defamed her in public, abused her mother, got her marriage annulled, before it could be solemnized. He has created all sorts of hurdles in the life of deceased. Left with no other option, she has committed suicide during her minority.

Now coming to the legal aspect of the issue, as canvassed by learned counsel for the applicant, that applicant is innocent and the deceased was hypersensitive girl, who has taken this extreme step without any abetment or goading from the applicant.

In this regard, for the purposes of “abetment” involves a mental process of instigating a person in doing something. A person abets the doing of a thing when (i) he instigate any person to do that thing; or (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or (iii) he intentionally aids, by acts or illegal omissions, the doing of that thing. These are the essentials to complete the abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to any thing.

A human mind could be affected and could react in myriad ways and impact of one’s action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person’s reaction to any other

human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of girl, or attempt to defame/disgrace her by posting her photographs in Social-media and Instagram, these factors come into play. The age of girl, her personality, her upbringing, social and financial status of her family, rural/urban setups, education etc. cumulatively affects her entire persona. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self confidence, her family atmosphere and background, age, upbringing etc. etc. Hence every case has to be dealt on its own facts and circumstances. In this regard, the court has come across with the judgments of Hon'ble Apex Court viz **(I) RAMESH KUMAR VS. STATE OF CHATTISGARH (2001) 9 S.C.C. 618 (II) MADAN MOHAN SINGH VS. STATE OF GUJRAT AND OTHERS (2010) 8 SCC 628 (III) PAWAN KUMAR VS. STATE OF HIMANCHAL PRADESH (2017) 7 SCC 780 (IV) CHITRESH KUMAR CHOPRA VS. STATE (GOVT. OF NCT OF DELHI) (2009) 16 SCC 605 AND (V) UDE SINGH AND OTHERS VS. STATE OF HARYANA, CRL. APPEAL NO. 233/2010, decided on 25th July, 2019.** The extracts of the ratio of all these judgments are:-

Where the accused by his acts or by continued course of conduct creates such circumstance that the deceased left with no other option except to commit suicide, instigation may be inferred. In other words, in order to establish that 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, willful omission or conduct until the deceased reacted or pushed or forced to take the extreme step.

(II) the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above.

Thus, assessing the facts of present case with the above parameters, posting the pictures, photos of the deceased girl on Social-media, Instagram by the present accused within few days before her death of that girl who is going to marry with another boy, the reason and objective behind is obvious needs no explanation. The girl is in her minority, having no father; the accused/applicant has virtually makes her naked among her family and social circle where she was left with no other option but to commit suicide by hanging herself.

After evaluating all these factors, facts and circumstances of present case, learned counsel for the applicant has failed to make

out any case for bail, and accordingly, the present bail of applicant is REJECTED.

Trial Court would proceed with the trial unaffected by any of the observations made in this order and make all possible efforts to conclude the same as early as possible.

Order Date :- 1.12.2020
Radhika/M. Kumar