

IN THE HIGH COURT OF JUDICATURE AT PATNA

Divakar Mishra

Vs.

The State of Bihar

CRIMINAL MISCELLANEOUS No. 72298 of 2022

02 May 2023

(Hon’ble Mr. Justice Shailendra Singh)

Issue for Consideration

Whether Petitioner is entitled for Regular Bail in connection with offence registered u/s 304B read with 34 of the Indian Penal Code?

Headnotes

India Penal Code – section 304B, 306 – petition for regular bail – allegation against Petitioner is that he tortured and killed his wife in connection with dowry demand and thereafter hanged the dead body of the victim from a ceiling fan in order to give color of suicide in respect of death of the victim.

Held: in the present matter, the victim’s suicide note is available regarding which there is no dispute – it does not appear that the petitioner’s acts as alleged in the suicide note were directly responsible to abate or instigate the victim to commit suicide though in between the victim and petitioner’s family there were some differences on account of day to day life and the victim made some ironical allegations against petitioner and his family members but the same are not of such a nature to instigate one to take such extreme step of suicide - considering all these facts as well as the petitioner’s custody period and also the completion of investigation against him, in the opinion of this Court a lenient approach can be taken in respect of the petitioner’s prayer – bail granted. **(Para – 3, 7)**

Case Law Cited

None

List of Acts

Indian Penal Code

List of Keywords

Regular Bail – Abetment to Suicide – Suicide Note – Dowry Demand – Torture - Mens Rea – Cruelty.

Case Arising From

Kazi Mohammadpur P.S. Case No.282 of 2022 dated 12.09.2022 registered for the offence punishable under Section 304B read with 34 of the Indian Penal Code.

Appearances for Parties

For the Petitioner/s: Mr. Ansul, Advocate

Mr. Aditya Pandey, Advocate

For the Opposite Party/s: Mr. Abhishek Kr. Srivastava, Advocate

Mr. Yashraj Bardhan, Advocate

For the State: Mr. Syed Ehteshamuddin, APP

Headnotes Prepared by Reporter: Ghanshyam

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72298 of 2022

Arising Out of PS. Case No.-282 Year-2022 Thana- KAJI MUHAMMADPUR District-
Muzaffarpur

DIVAKAR MISHRA Son of Jagat Narayan Mishra R/v- Parao Pokhar, New Shankarpuri, P.S.- Kaji Mohammadpur, District- Muzaffarpur

... Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate
	:	Mr. Aditya Pandey, advocate
For the Opposite Party/s	:	Mr. Abhishek Kr. Srivastava, Advocate
	:	Mr. Yashraj Bardhan, Advocate
For the State	:	Mr. Syed Ehteshamuddin, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

3 02-05-2023 1. Heard learned counsel for the petitioner,
learned counsel for the Informant and learned APP for the State.

2. Petitioner seeks regular bail in connection with Kazi Mohammadpur P.S. Case No.282 of 2022 dated 12.09.2022 registered for the offence punishable under Section 304B read with 34 of the Indian Penal Code.

3. Allegedly, this petitioner, who happens to be husband of the victim and his family members tortured the victim for the demand of Rs.20 lacs and when the victim got a Government job of teacher, the accused persons including the petitioner objected to her service, however that dispute was resolved but thereafter in furtherance of conspiracy, all the



accused persons including the petitioner killed the informant's sister on 12.09.2022 and thereafter hanged the dead body of the victim from a ceiling fan in order to give color of suicide in respect of death of the victim.

4. The main submissions advanced by the learned counsel for the petitioner are that the petitioner is husband of the deceased, though in this matter the police submitted charge-sheet under Section 304B of IPC against the petitioner but during the course of investigation the police got suicide note of the victim and the same is available in the case diary and if the said suicide note is taken into account then the petitioner's alleged acts may only come in the purview of the offence punishable under Section 306 of IPC but if the entire facts narrated in the said suicide note are taken into account then only a day to day family dispute appears to have taken place in between the victim and her in laws and the facts revealed by the victim in her suicide note are not of such a nature to directly instigate or abate the victim to commit suicide and hence as per the provisions of Section 107 of IPC the alleged act of this petitioner does not come in the purview of abatement. Learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of M. Mohan vs The



State, represented by the Deputy Superintendent of Police passed in Cr. Appeal No.611 of 2011 and referred to the paragraph Nos. 46 and 50 of the judgment in support of his contention which are being reproduced as follows:-

“46. *The intention of the Legislature and the ratio of the cases decided by this Court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.*

50. *Undoubtedly, the deceased had died because of hanging. The deceased was undoubtedly hyper-sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. In a joint family, instances of this kind are not very uncommon. Human sensitivity of each individual differs from person to person. Each individual has his own idea of self-esteem and self-respect. Different people behave differently in the same situation. It is unfortunate that such an episode of suicide had taken place in the family. But the question remains to be answered is whether the appellants can be connected with that unfortunate incident in any manner?”*

Further submission is that the petitioner has fair and



clean antecedent and has been languishing in jail since 13.09.2022.

5. Learned counsel appearing for the Informant has vehemently opposed the bail prayer and submitted that after the submission of charge-sheet the court concerned took cognizance under Section 304B of IPC and the Deputy Superintendent of Police also concluded that the victim was harassed by the accused persons including the petitioner for the demand of money and petitioner's married sister also used to live at the sasural of the deceased and she also engaged in committing cruelty with the deceased and the victim got a Government job which was also one of the reasons to harass her by the accused persons including the petitioner.

6. Learned counsel appearing for the State has also opposed the bail prayer.

7. Heard both the sides and perused the FIR and the case diary of this case. In the case diary, the victim's suicide note is available regarding which there is no dispute and the same appears to be in the victim's own writing and during the course of argument learned counsel appearing for the informant has not disputed the same. I have gone through the said suicide note and it does not appear that the petitioner's acts



as alleged in the suicide note were directly responsible to abate or instigate the victim to commit suicide though in between the victim and petitioner's family there were some differences on account of day to day life and the victim made some ironical allegations against petitioner and his family members but the same are not of such a nature to instigate one to take such extreme step of suicide. Considering all these facts as well as the petitioner's custody period and also the completion of investigation against him, in the opinion of this Court a lenient approach can be taken in respect of the petitioner's prayer, let the petitioner be released on bail on furnishing bail bond of Rs.10,000/-(Ten Thousand) with two sureties of the like amount each to the satisfaction of the concerned Court in connection with Kazi Mohammadpur P.S. Case No.282 of 2022.

(Shailendra Singh, J)

sangam/-

U		T	
---	--	---	--

AFR

