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HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No. 1138 of 2021

Arun Bairagi ...Applicant

Versus

State of Uttarakhand ...Respondent

Present:-

Mr. Vikas Kumar Guglani, Advocate for the applicant.

Mr. Lalit Miglani, A.G.A. for the State.

Hon'ble Ravindra Maithani, J.

Applicant Arun Bairagi is in judicial custody, in FIR No. 48 of 2021, under Sections 306 and 506 IPC, Police Station – Sitarganj, District Udham Singh Nagar. He has sought his release on bail.

2. Heard learned counsel for the parties through video conferencing.

3. The deceased and the applicant were married 11 years prior to the lodging of the FIR. According to the FIR, the applicant was a drug addict, who would beat and quarrel with the deceased in an inebriated state and also pressurised her to do *galat kaam*. The deceased did not like all these activities. She would leave his house and stayed in her parental house. There was a panchayat also which was done in between, wherein the applicant again tendered his apologies and took the deceased alongwith him. The applicant also tendered his apologies via a text sent through whatsapp on the mobile of a Prashant Mandal. On 14.02.2021, the deceased committed suicide.

4. Learned counsel for the applicant would submit that the deceased and the applicant were happily married for 11 years; the deceased was never tortured by the applicant; there is nothing specific in the FIR; instead it is argued that the facebook post of the deceased reveals that the relationship between the deceased and the applicant were much warm; the deceased had written beautiful things about her husband; had she been tortured, she would never have stated or posted such things about her husband on the facebook.

5. The Investigating Officer had collected certain audio clips allegedly of the deceased in which she had narrated the trauma, which she had undergone. On it, learned counsel for the applicant would submit that there is nothing specific against the applicant in such audio clips; it is not clear as to who is the author of these clips. Their credibility is yet to be established. They cannot be of much utility at this stage. Reference has been made to the statements of Prashant Mandal, Sandhya and Vipul Rai to argue that there is nothing much against the applicant in the statements of these witnesses; there is no immediate cause which might have induced the deceased to commit suicide. Therefore, it is argued that it is a case fit for bail.

6. Learned State counsel would submit that the allegations are serious in nature. The audio clips support the prosecution case. The offence is heinous in nature.

7. After 11 years of marriage the deceased committed suicide leaving behind a young son. It is stage of bail. Deeper discussion on merits should be avoided; it is not expected of. The case against the applicant is that he abetted suicide of his wife. What is abetment is defined under Section 107 of IPC. It need not be much discussed. What went through the mind of the deceased when she committed suicide? It is very tough to be read by a human being. What induced a person to end his/her life may only be gathered with the attending circumstances. Sometimes suicide notes and other times attending circumstances help the Court to reach any conclusion on this aspect. Instigation to commit

suicide is abetment to suicide and the instigation has to be gathered from the circumstances of a particular case.

8. In the case of Amit Kapoor Vs. Ramesh Chander and another, (2012) 9 SCC 460, on such a issue the Hon'ble Supreme Court observed "All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence."

9. Undoubtedly, the FIR does not give the minute details as to which date, what time torture or harassment was made. The allegations are that the applicant would beat the deceased in an inebriated state and would pressurise her to do *galat kaam*. There is a reference to a panchayat also. The witnesses have stated about the panchayat. The facebook posts which have been placed alongwith bail application definitely reveals something very shining. But, it is a case that there was darkness behind, below or beneath this expressed shine. What was that *galat kaam* which is referred to in the FIR.

10. The sister-in-law of the deceased Sunita Haldar has explained it. According to her, the applicant would pressurise the deceased to make *gandi* video call to different persons. A witness Dipti Mandal has also stated about it. She would tell the IO that in fact, the applicant would pressured the deceased to do *dhandha* and would make her *gandi gandhi* video. The witnesses have stated about panchayat. A witness Animesh Mandal has further explained and told the IO that in fact once the deceased had told it to him that the applicant harasses her; he would pressurise her to speak to different people and would show her nude body online to various people in the night. He would say that by that he gets money.

11. The informant has also preserved the apology given by the applicant which reveals that something wrong was done by the applicant. The Court refrains to make detailed analysis of it. The

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recorded conversation has also been taken into possession by the IO. It reveals the horrible story and according to the prosecution, this conversation refers to the deceased and the applicant and according to it, the applicant during night would pressurise his wife to make nude video calls to different persons. He had made fake IDs. Not only this, the applicant would pressurise the deceased to have sex chat with different persons and would also pressurise her to be in flesh trade. Undoubtedly, the credibility of this audio recording would be tested during trial. If required, voice forensic examination may be done. But, what is before this Court at this stage has been discussed hereinbefore. Is it not a case wherein the deceased felt totally frustrated and found it difficult to continue existence? She ended her life.

12. Having considered all these facts, this Court is of the view that it is not a case fit for bail and the bail application deserves to be rejected.

13. The bail application is rejected.

14. It is made clear that any observation made by this Court is only for the purpose of deciding the present bail application and the same shall not be taken into consideration at all in any other proceedings.

(Ravindra Maithani, J.)
13.07.2021