

**THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE**  
**M.Cr.C. No.31704 of 2021**

*(Pawan vs. State of Madhya Pradesh)*

**Indore, dated :06.07.2021**

**Heard through Video Conferencing.**

Shri Vivek Singh, learned counsel for the applicant.

Shri S. Jaiswal, learned Public Prosecutor for the non-applicant – State.

Perused the case diary.

**ORDER**

This is first application under Section 439 of Cr.P.C. for grant of bail. Applicant - Pawan S/o Tulsiram Nigwal is implicated in Crime No.73/2021 registered at Police Station Rajpur, District Barwani for the offence punishable under Section 305 of IPC along with 7/8 of the Protection of Children from Sexual Offences Act.

2. As per prosecution story, minor prosecutrix was being harassed by the applicant that he would kidnap her and was pestering for marriage and due to such threat and harassment, the minor prosecutrix committed suicide by hanging.

3. Learned counsel for the applicant submits that if the aforesaid act would have been considered to be true in its entirety, it does not involve the ingredients of abetment, as contained under Section 107 of IPC and therefore, applicant cannot be held liable to abetment of suicide of the minor girl. He further submits that charge-sheet has been filed and applicant is in jail since 25.02.2021.

4. Learned Public Prosecutor for the State was also heard who has invited Court's attention to the statements of father and brothers of prosecutrix, in which it has been mentioned by them that prosecutrix

**THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE**  
**M.Cr.C. No.31704 of 2021**

*(Pawan vs. State of Madhya Pradesh)*

was being harassed by the applicant continuously which lead her to commit suicide.

Considered.

5. The question before this Court is whether harassment in itself amounts to abetment of suicide or not?

6. The evidence available on record was considered. Tukaram, father of deceased, Nirmala, mother of deceased, brothers namely, Karan and Arun, Nandini, sister of deceased and brother-in-law of deceased, Mahesh have stated that applicant used to harass the minor prosecutrix constantly and repeatedly asking her to marry him and that he would abduct and marry her. The deceased had narrated her ordeal to these family members, Such harassment had become an almost daily feature on the part of applicant and even when the deceased would go to water-tank to fetch water, applicant harassed her. The independent witness namely, Amarsingh has stated that one day prior to the date of incident, he had seen the applicant harassing the prosecutrix by not allowing her to take water from the water-tank and was compelling her to marry him and Amarsingh had scolded the applicant. The factum of Amarsingh scolding the applicant has been witnessed by brother of deceased i.e. Karan. Thus, there is evidence of continuous harassment to the deceased on the part of applicant. For constituting the offence of abetment, it would be appropriate to reproduce Sections 306 and 107 of IPC, which run as under :-

*"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*

THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE  
M.Cr.C. No.31704 of 2021

(Pawan vs. State of Madhya Pradesh)

*fine."*

**"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.*

*Explanation 1. – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*

*Explanation 2. – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."*

7. In the case of **S. S. Chheena vs. Vijay Kumar Mahajan & others, 2010 (12) SCC 190**, where the Apex Court reiterated on the essentials of the offence under Section 306 IPC as under:-

*“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 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*

THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE  
M.Cr.C. No.31704 of 2021

*(Pawan vs. State of Madhya Pradesh)*

*push the deceased into such a position that he committed suicide.*

8. The Apex Court in the case of **Ramesh Kumar vs. State of Chhattisgarh, 2001 (9) SCC 618** has held as under :-

*“..... mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 of IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.....”*

9. In the case of **Pawan Kumar vs. State of Himachal Pradesh, 2017 (7) SCC 780**, the Apex Court had expressed serious concern over the menace of eve-teasing and its adverse impact on the civilized society while indicating the affirmative rights of a woman with reference to Articles 14, 15 and 21 of the Constitution of India. The Apex Court referred to an earlier decision and observed as under: -

*".....We are at pains to state that in a civilised society eve teasing is causing harassment to women in educational institutions, public places, parks, railway stations and other public places which only go to show that requisite sense of respect for women has not been socially cultivated. A woman has her own space as a man has. She enjoys as much equality under Article 14 of the Constitutions as a man does. The right to live with dignity as guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution.*

**THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE**  
**M.Cr.C. No.31704 of 2021**

*(Pawan vs. State of Madhya Pradesh)*

*That apart creates an incurable dent in the right of a woman which she has under Article 15 of the Constitution. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with dignity and freedom.....*

*In a civilised society male chauvinism has no room. The Constitution of India confers the affirmative rights on women and the said rights are perceptible from Article 15 of the Constitution. When the right is conferred under the Constitution, it has to be understood that there is no condescension. A man should not put his ego or, for that matter, masculinity on a pedestal and abandon the concept of civility. Egoism must succumb to law. Equality has to be regarded as the summum bonum of the constitutional principle in this context. The instant case portrays the deplorable depravity of the appellant that has led to a heart-breaking situation for a young girl who has been compelled to put an end to her life. Therefore, the High Court has absolutely correctly reversed the judgment of acquittal and imposed the sentence. It has appositely exercised the jurisdiction and we concur with the same."*

**10.** The Apex Court in the case of **Chitresh Kumar Chopra vs. State (Government of NCT of Delhi), 2009 (16) SCC 605** has held as under :-

*"19. As observed in Ramesh Kumar (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the 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 or wilful omission or conduct which may even be a wilful silence until the deceased reacted or*

**THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE**  
**M.Cr.C. No.31704 of 2021**

*(Pawan vs. State of Madhya Pradesh)*

*pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and*

*(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.*

20. ....The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss or self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

**11.** Further, the Apex Court in the case of **Ude Singh vs. The State of Haryana, 2019 (17) SCC 301** has held as under :-

*".....If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour,*

**THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE**  
**M.Cr.C. No.31704 of 2021**

*(Pawan vs. State of Madhya Pradesh)*

*each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.*

*We may also observe that 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 a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. 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 and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances."*

**12.** Thus, one can see the constant harassment on the part of the applicant of a minor girl on routine basis was likely to instil a sense of helplessness and frustration on the part of deceased and such harassment made even her daily movement difficult leading her to commit suicide by hanging. Eve-teasing on the part of applicant continued unabated leaving no option to the prosecutrix but to end her life. Such harassment was not a stray incident but was a feature in-continuum.

**13.** Learned counsel for the applicant has filed an order dated 21.05.2021 passed in MCRC No.15576/2021 (Ranjit vs. The State of Madhya Pradesh), in which bail had been granted in a case of abetment of suicide. The aforesaid order was considered. There was singular instance of harassment as per the facts of that case and although,

**THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE**  
**M.Cr.C. No.31704 of 2021**

*(Pawan vs. State of Madhya Pradesh)*

prosecution story was that prosecutrix had gone along with her brother and was harassed by the applicant. However, her brother had stated that he had not seen the incident. Thus, facts of the aforesaid case are different from the present case in which there appears to be constant harassment on the part of the applicant.

**14.** Thus, prima-facie, the elements of abetment of suicide are found to be existing in this case. Hence, the factual matrix of the case do not make the applicant eligible for grant of bail. The application thus stands dismissed.

**(Shailendra Shukla)**  
**Judge**

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