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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 10th May, 2024*

+ CRL.M.C. 3782/2024

SUMAN MALHOTRA

....Petitioner

Through: Mr. Rahul Sharma, Mr.
Gyan Ranjan Kushyan,
Mr. Shubham Raj Anand,
Mr. Ashish Pandey, Mr.
Mayank Rai, Mr. Atul
Kumar Pandey, Mr.
Naveen Gupta & Mr.
Sachin Kumar, Advs.

versus

STATE (GOVT. OF NCT OF
DELHI) & ANR.

....Respondents

Through: Mr. Ajay Vikram Singh,
APP for the State with Ms.
Diksha Saraf, Ms. Pragati
Sharma & Ms. Ashima
Rani, Advs.
SI Naveen (P.S.
Wazirabad, Delhi).
Mr. Harish Kumar Gupta
& Mr. Gaurav Sharma,
Advs. for R2

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

CRL.M.A. 14469/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.



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3. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 06.03.2024 (hereafter '**the impugned order**'), passed by the learned Additional Sessions Judge ('ASJ'), Central District, Tis Hazari Courts, Delhi, in FIR No. 824/2023, registered at PS Wazirabad, for the offence under Section 306 of the Indian Penal Code, 1860 ('IPC').

4. The learned ASJ, by the impugned order, had dismissed the application filed by the petitioner under Section 173(8) of the CrPC for further investigation in the present FIR.

5. The FIR was registered on a complaint given by the petitioner, who is the sister of the victim, alleging that Respondent No. 2 had instigated and forced the victim to commit suicide by consuming poison. It was alleged that Respondent No. 2 was the person responsible for the death of the victim.

6. Pursuant to the investigation, the chargesheet was filed by the State against Respondent No.2 for the offence under Section 306 of the IPC.

7. The learned counsel for the petitioner submits that the present case is one where the charges should have been framed in relation to the offence under Section 302 of the IPC.

8. He relies upon certain WhatsApp chats between Respondent No.2 and the deceased victim. He argues that the concerned chats show that Respondent No.2 was aware that the deceased victim had consumed poison. He points out that when



the deceased victim had messaged Respondent No.2 that she feels like vomiting, Respondent No.2 had messaged her to not do so.

9. He submits that the conversation through WhatsApp messages happened at around 03:00 AM. He submits that there are other WhatsApp chats, prior to the ones that were retrieved, which would have demonstrated that the present is a case of murder and it was the accused who had supplied the poison to the deceased and was responsible for her death.

10. He further submits that the learned ASJ had dismissed the petitioner's application essentially on the ground that the same was not maintainable.

11. The learned Additional Public Prosecutor ('APP') for the State as well as the learned counsel for the accused submit that they have no objection if the present petition is heard on merits without prejudice to the contention that the application filed by the petitioner under Section 173(8) of the CrPC was not maintainable.

12. The learned APP for the State submits that the mobile phones of the deceased as well as Respondent No.2 have been sent to FSL. He submits that the report is awaited, however, as and when the report comes, an appropriate order can be passed by the learned Trial Court if the report points towards the offence in relation to Section 302 of the IPC.

13. The learned counsel for the accused/ Respondent No. 2 submits that even if the allegations are taken at the highest, no offence under Section 306 of the IPC is also made out against



Respondent No.2.

14. It is not in dispute that the WhatsApp chat and the evidence collected thus far, at this stage, does not point towards the commission of offence under Section 302 of the IPC.

15. The Police has filed a chargesheet in regard to Section 306 of the IPC and the matter is stated to have been fixed for arguments on charge.

16. The petitioner, at this stage, is only seeking that further investigation be carried out in regard to the phones which have been seized by the Police. Undisputedly, the seized mobile phones of the deceased as well as the accused have already been sent to FSL for examination.

17. It is not disputed that if the report discloses further evidence which may point towards an offence in relation to Section 302 of the IPC, an appropriate order can be passed by the learned Trial Court.

18. The learned Trial Court also noted that the evidence on record, at this stage, does not satisfy the ingredients of Section 300 of the IPC, punishable under Section 302 of the IPC. It also noted that the FSL report for retrieval of the WhatsApp chats is still pending.

19. In view of the above, without commenting on the issue whether the application filed by the complainant/ petitioner under Section 173(8) of the CrPC was maintainable, this Court finds no infirmity in the impugned order.

20. Needless to say, as stated by the learned APP for the state, as and when any evidence comes forward pointing towards the



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commission of offence under Section 302 of the IPC, an appropriate order would be passed by the learned Trial Court.

21. The petition is disposed of in the aforesaid terms.
22. It is clarified that observations made in the present order are for the purpose of deciding the present petition. The learned Trial Court shall hear the arguments on charge uninfluenced by any observations made by this Court in the present order.

AMIT MAHAJAN, J

MAY 10, 2024
“SS”