

**Case :-** MISC. BENCH No. - 25222 of 2020

**Petitioner :-** Nasim Bano

**Respondent :-** State Of U.P. Thru. Prin. Secy. Home,Lko.& Ors.

**Counsel for Petitioner :-** Desh Deepak Singh,Anilesh Tewari,Manish Mishra

**Counsel for Respondent :-** G.A.,J Bahadur,S Tabreez,Sheeran Mohiuddin Alavi

**Hon'ble Devendra Kumar Upadhyaya,J.**

**Hon'ble Mrs. Saroj Yadav,J.**

1. Notice on behalf of respondent nos.1,2 and 3 has been accepted by learned A.G.A. whereas notice on behalf of respondent no.4 has been accepted by Shri S.M.Alvi, Advocate on whose behalf Shri Shubham Tripathi, Advocate appears.

2. The respondents may file their counter affidavits within a period of four weeks. Two weeks' time thereafter shall be available to the learned counsel for the petitioner to file rejoinder affidavit.

3. List after expiry of the aforesaid period.

4. Under challenge in this petition is the impugned F.I.R. dated 25.5.2020 lodged as F.I.R.No.0273/2020, under Sections 147, 323, 504, 506 and 306 I.P.C., Police Station Bakshi Ka Talaab, District Lucknow.

5. It has been contended by leaned counsel appearing for the petitioner that the petitioner is the sister of the wife of the deceased i.e. his sister-in-law and has been living a married life separately in Sitapur.

His further submission is that from perusal of the recital made in the impugned F.I.R., in fact the case under Section 306 I.P.C. is not made out inasmuch as that except general allegation of harassment against the petitioner, there is no specific mention of any act direct or indirect of inciting the deceased to commit suicide.

6. It has further been argued by learned counsel for the petitioner that in the matter of co accused Kadim Ali, a Division Bench of this court vide

order dated 17.9.2020 passed in Writ Petition No.13748 (M/B) of 2020 has provided interim protection.

7. Learned counsel appearing for complainant/respondent no.4 on the other hand has submitted that there are allegations against the petitioner and other family members and it is on account of the harassment meted out to the deceased that he committed suicide.

He has further stated that anticipatory bail moved by the petitioner has been rejected by this Court vide order dated 6.8.2020.

8. Learned counsel for respondent no.4 has, thus, vehemently opposed the prayer made in this petition and has stated that the F.I.R. clearly discloses offence under Section 306 I.P.C.

9. Learned A.G.A. also opposes the prayer made in this petition.

10. We have considered the rival submissions of learned counsel for the respective parties and also perused the record available in this petition.

11. To make out an offence under Section 306 I.P.C., mere allegation or assertion regarding harassment of the deceased does not suffice. In fact for constituting an offence of abetment of suicide under Section 306 I.P.C., there must be a proof of direct or indirect act of incitement leading to commission of suicide. In the F.I.R., so far as the petitioner is concerned, who is the sister-in-law of the deceased, prima facie, it does not appear that it contains any assertion or allegation regarding any direct or indirect act of inciting the deceased to commit suicide.

12. So far as the rejection of the prayer of the petitioner for anticipatory bail is concerned, we can only point out that scope of writ jurisdiction under Article 226 of the Constitution of India is much larger than the scope of Section 438 Cr.P.C.

13. Accordingly, having regard to the overall facts and circumstances of the case, we direct that petitioner shall not be arrested till the next date of

listing, in connection with impugned F.I.R.

The petitioner is however directed to cooperate with the investigation.

Order Date :- 18.12.2020

Shukla