

Neutral Citation No. - 2023:AHC:214571

Reserved On:- 30.10.2023

Delivered On:- 07.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5762 of 2021

Applicant :- Sanjay Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar,Mohit Singh,Rajeshwar Prasad Sinha

Counsel for Opposite Party :- G.A.,Pradeep Singh

Hon'ble Siddharth, J.

1. Heard Sri R.P. Sinha, learned counsel for applicant and learned A.G.A for State.
2. The instant bail application has been filed on behalf of the applicant, Sanjay Kumar, with a prayer to release him on bail in Case Crime No. 262 of 2020, under Sections- 323 and 302 IPC, Police Station- Puramufti, District- Kaushambi.
3. There is allegation against the applicant of causing dowry death of his wife.
4. Learned counsel for the applicant has submitted that the cause of death of the deceased has been alleged to be asphyxia as a result of ante-mortem throttling but from post-mortem report of the deceased it does not appears that it is a case of throttling. He has submitted that it is a case of hanging.

5. Learned A.G.A has opposed the bail and has submitted that from the post-mortem report of the deceased it is clear that it is a case of throttling and not hanging.

6. After hearing the rival submission, this Court finds that in Modi a Text Book of Medical Jurisprudence and Toxicology, has considered the differences between asphyxia as a result of hanging and asphyxia as a result of strangulation. Throttling is nothing but commission of offence of strangulation by use of thumb and fingers. The difference between hanging and strangulation has been considered by Modi as follows :-

	Hanging	Strangulation
1.	Most suicidal	Mostly homicidal
2.	Face-usual pale and petechiae rare	Face-congested, livid and marked with petechiae
3.	Saliva-dribbling out of mouth down on the chin and chest	Saliva- No such dribbling
4.	Neck-stretched and elongated in fresh bodies	Neck-Not so
5.	External signs of asphyxia usually not well marked	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect)
6.	Ligature mark-oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like	Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.

7. Apart from that Modi has noted in chapter 20 of paragraph 20.0.5.1(2) the signs of throttling by way of thumbs and finger tip are as follows :-

“If fingers are used (throttling), marks of pressure by the thumb and the fingertips are usually found on either side of the windpipe. The thumb mark is ordinarily higher and wider on one side of the front of the neck, and the finger marks are situated on its other side obliquely downwards and outwards, and one below the other. However, the marks are sometimes found clustered together, so that they cannot be distinguished separately. These fingertip bruises, each disc-shaped and 1-2 cm in diameter, look like red bruises (six penny bruises) if examined soon after death, but they look brown, dry and parchment-like sometimes after death. One should refrain from drawing inference from the direction of curved abrasion, as to how the hand of the assailant might have been applied to the neck of victim. The inherent quality of the victim's skin, the shape and length of the fingernails of the assailant render such inferences extremely tenuous. This linear or crescentic marks produced by the fingernails are occasionally present, if the fingertips are pressed deeply into the soft tissues of the neck. A body, which is wet, may not reveal fingernail marks until drying of the skin of the body. When both hands are used to grasp and compress the throat, the thumb mark of one hand and the finger marks of the other hand are usually found on either side of the throat. Sometimes, both thumb marks are found on one side and several finger marks on the opposite side. If the throat is compressed between two hands, one being applied to the front and the other to the back, bruises and abrasions may be found on the front of the neck, as well as on its back. Besides these marks, there may be abrasions and bruises on the mouth, nose, cheeks, forehead, lower jaw or any other part of the body, if there has been a struggle. Similarly, fractures of the ribs and injuries to the thoracic and abdominal organs may be present, if the assailant kneels on the chest or abdomen of his victim while pressing his throat.”

8. The injury found on the neck of the person of the deceased are as follows :-

1. Contused swelling below side of neck of size 5cm x 13.05cm
2. Two abrasions of size .5cm x .1cm on left side of neck, 4 ½ cm below left ear.

3. One abrasion of size .6cm x .1cm on right side of neck, 4 cm below right ear.

9. It is clear from the injury suffered by the deceased that they are close to the death caused by strangulation / throttling than to the injuries caused by hanging. No saliva was found dribbling from side of mouth of the deceased. Contused swelling was found on a interior and back side of neck of the deceased 5 cm x 13.05 cm. Two abrasions of size 0.5cm x 1 cm was present on left side of neck, 4.5 cm below left ear. One abrasion of size .6 cm x .1 cm was present on right side of neck, 4 cm below right ear. No ligature mark was found on the neck of the deceased. It appears that the neck of the deceased was pressed from the front side which resulted in contused swelling. It appears that some hard object was used to compress the neck of the deceased which resulted in long injury of contused swelling measuring 5 cm x 13.5 cm. It is clear that it is not a case of hanging but of strangulation / throttling.

10. After hearing the rival contentions, this Court does not finds any ground for granting bail to the applicant at this stage.

11. The bail application is accordingly, rejected.

12. The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferable within a period of one year from the date of production of certified copy of this order.

Order Date :- 07.11.2023

Rohit