

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32104 of 2021

Applicant :- Smt. Neeraj

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashutosh Kumar Tiwari, Avnish Kumar Srivastava, Priyanka Sharma, Rajesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

Heard learned counsel for the applicant and learned A.G.A. for the State and perused the material on record.

This is second bail application of the applicant.

By means of this application, the applicant, Smt. Neeraj, who is involved in Case Crime No. 934 of 2020, under Sections- 306 IPC, Police Station- Khurja Nagar, District- Bulandshahar, and is in jail since 26.11.2020, is seeking enlargement on bail during the trial.

The first bail application of the applicant was rejected by the coordinate Bench of this Court by the order dated 17.02.2021. Since more than two years have passed, the matter has been placed before this Court.

Co-accused, Bablu, is alleged to be having affair with the applicant, Smt. Neeraj, and he has been granted bail by the order dated 21.07.2022 quoted hereinbelow :-

"Heard Sri Yogesh Kumar, learned counsel for the applicant and Sri Sanjay Singh, learned A.G.A.-I appearing for the State.

A first information report was lodged on 20.9.2020 by the first informant namely Smt. Virma Devi by way of moving an application under Section 156(3) Cr.P.C. against the applicant and Smt. Neeraj, which was registered as Case Crime No.934 of 2020, under Section 302 I.P.C. at Police Station Khurja Nagar, District Bulandshahar.

After the death of Rakesh ('now deceased' hereinafter referred to as 'deceased') Panchyatnama was prepared on 3.8.2020. The post

mortem of the deceased was conducted on 4.8.2020, according to which cause of death is asphyxia as a result of anti mortem hanging.

Submission is that incident is taken place on 3.8.2020, whereas the first information report was lodged on 20.9.2020 for which no plausible explanation has been given, which itself shows that it is after thought. It is further submitted that the applicant had no physical relation with the co-accused Smt. Neeraj. The real fact is that the deceased was a drunker and due to this reason he always quarrel with his wife on account of which the deceased committed suicide.

Further it is submitted that a first information report was lodged on 20.10.2020 by the co-accused Smt. Neetu Devi against the applicant and other which was registered as Crime No.1042 of 2020, under Section 376-D I.P.C. and Section 67 and 67-A of Information Technology Act by way of moving an application under Section 156(3) Cr.P.C. showing the incident prior to seven months.

Learned counsel for the applicant has drawn the attention of this Court towards authoritative pronouncement of Hon'ble Apex Court in the matter of Geo Varghese Vs. The State of Rajasthan & Anr reported in AIR 2021 SC 4764 paragraph no.13 whereof reads as under :-

'13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 I.P.C. The abatement of suicide by anybody is also an offence under Section 306 I.P.C.. It is would be relevant to set out Section 306 of the I.P.C. which reads 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 for fine." '

Further in the matter of Velladurai Vs. State represented by the Inspector of Police reported in 2022 (118) ACC 701 paragraph no.9 whereof reads as under :-

'9. Now so far as the offence under Section 306 IPC is concerned, in a case where if any person instigates other person to commit suicide and as a result of such instigation the other person

commits suicide, the person causing the instigation is liable to be punished for the offence under Section 306 IPC for abetting the commission of suicide. Therefore, in order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide. As observed and held by this Court in the case of Amalendu Pal (supra), mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC.'

Further, in the matter of Arnap Manoranjan Goswami v. State of Maharashtra reported in (2021) 2 Supreme Court Cases 427 wherein it has been held that 'FIR and suicide note though prima facie revealed harassment, there was no proof instigation to commit suicide - Thus held prima facie it cannot be said that the appellant was guilty of having abetted the suicide within the meaning of S.306 - Furthermore, charge under S. 306 I.P.C. is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide, which was prima facie absent in the present case.'

Further, in the matter of Rajesh Vs. State of Haryana reported as (2020) 15 Supreme Court Cases 359, wherein it has been held that 'Abetment of suicide - No evidence available to disclose that accused instigated deceased to commit suicide - Neither was there provocation nor encouragement by accused to deceased to commit suicide - One incident of slapping of deceased by appellant not proximate to commission of suicide by deceased, held cannot be sole ground to hold him responsible for instigating deceased to commit suicide - Offence of abetting suicide not made out - Conviction of accused under S. 306, reserved.'

Further, Vaijnath Kondiba Khandke Vs. State of Maharashtra and another reported as (2018) 7 SCC 781, wherein it has been held that 'Abetment of suicide -Ingredients for invoking of S. 306 - Not made out - Allegations in FIR, relating to mental torture of deceased at the hand of his higher officers, in present case held, completely inadequate not satisfying requirement under S. 306 - proceedings initiated against the accused is quashed.' It is thus contended that the basic ingredient which requires to constitute an offence punishable under Section 306 I.P.C. are missing in body of the F.I.R., hence no offence under the charged

Sections is made out against the applicant. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused has also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required. It has also been submitted that the applicant is languishing in jail since 3.1.2022. It has been pointed out that the applicant has no criminal history.

Learned A.G.A. opposed the prayer for bail.

Having heard the submissions of learned counsel of both sides, nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment, and larger mandate of the Article 21 of the Constitution of India, the dictum of Apex Court in the case of *Dataram Singh v. State of U.P. and another*, reported in (2018) 2 SCC 22 and without expressing any opinion on the merit of the case, I find it to be a case of bail.

Let the applicant Shishupal Yadav involved in Case Crime No.441 of 2021, under Sections 147, 323, 504, 394, 306 I.P.C., Police Station Kotwali Mahoba, District Mahoba be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions.

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court

on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

In case of breach of any of the above conditions, the trial court will be at liberty to cancel the bail.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case. "

The aforesaid order was subsequently corrected by the order dated 05.08.2022 granted below:

"Ref: Civil Misc. Correction Application No. 5 of 2022

This is an application for correction in the order dated 21.7.2022.

Heard learned counsel for the parties and perused the record.

Cause shown is sufficient.

The words 'Smt. Neetu Devi' and 'Let the applicant Shishupal Yadav involved in Case Crime No. 441 of 2021, under Sections 147, 323, 504, 394, 306 I.P.C., Police Station Kotwali Mahoba District Mahoba' occurring in the fifth and fourteenth paragraphs of the order dated 21.7.2022, have been substituted by the words 'Smt. Neeraj Devi' and 'Let the applicant Babloo involved in Case Crime No.934 of 2020, under Section 306 I.P.C., Police Station Khurja Nagar, District Bulandshahr' respectively.

With the above corrections, the application stands allowed.

This order be read in continuation to the order dated 21.7.2022. "

It is submitted by learned counsel for the applicant that similarly placed co-accused, Babloo, has already been enlarged on bail by this Court by order dated 21.07.2022 passed in Criminal Misc. Bail Application No. 6133 of 2021. He has further submitted that since the role of the applicant is identical to that of co-accused, Babloo,

who has already been enlarged on bail, she is also entitled to be enlarged on bail on the ground of parity and for the reasons given in the order of co-accused.

The prayer for bail has vehemently been opposed by learned A.G.A.

Considering the submissions made by learned counsel for the applicant as well as learned A.G.A., this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity.

In view of the above, let the applicant be released on bail on her executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of her absence, without sufficient cause, the Trial Court may proceed against her under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuses the liberty of bail during trial and in order to secure her presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against her in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against her in accordance with law.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 6.12.2023

Rohit