

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35549 of 2023

Applicant :- Ramjan

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Anil Kumar, the learned counsel for applicant and the learned A.G.A. for State.
2. Perused the Court.
3. This application for bail has been filed by applicant- Ramjan seeking his enlargement on bail in Case Crime No. 136 of 2023 under Section 306 I.P.C., Police Station-Rath, District- Hamirpur, during the pendency of trial.
4. Record shows that in respect of an incident, which is alleged to have occurred on 25.10.2022, a delayed F.I.R. dated 25.03.2023, was lodged by first informant-Smt. Vimla (mother of the deceased) and was registered as Case Crime No. 136 of 2023 under Section 306 I.P.C., Police Station-Rath, District- Hamirpur. In the aforesaid F. I.R., five persons namely Ramjan, husband (applicant herein), Rahman (Jeth), Shamsheer (Devar), Sanno (Nanad) Smt. Nanhi (Mother-in-law) of the deceased have been nominated as named accused.
5. It is apposite to mention here that in the occurrence dated 25.10.2023, the wife of applicant sustained grievous burn injury. It is the case of applicant that immediately after the occurrence had taken place, the victim was rushed to the medical college, Saifai,

Etawah. The said fact is established from the document occurring at page 63 of the paper book. Ultimately, the victim succumbed to the injury sustained by her on 26.10.2022. Thereafter inquest (Panchnama) of the body of deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses) nature of death of deceased could not be categorized but the cause of death of the deceased was specified as burn injury. Subsequent to above, post-mortem of the body of the deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was said to be asphyxia as a result of ante-mortem burn injury.

6.It is after expiry of a period of more than five months from the date of occurrence that the aforementioned F.I.R. giving rise to present criminal proceedings was lodged by first informant.

7. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of afore-mentioned case crime number in terms of Chapter XII Cr.P.C. During course of investigation, Investigating Officer examined the first informant and other witnesses namely Smt. Vimla, Rahman, Sahabuddin, Attek Khan, Mohd. Taufique, Islam, Virendra Singh, Hazrat Mohammad, Hameed Shah, Sahmid, Saleem Khan under Section 161 Cr.P.C. Witnesses so examined have substantially supported the F.I.R. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of applicant is fully established in the crime in question. He therefore opined to submit charge-sheet. Accordingly, Investigating Officer submitted the charge sheet dated 23.06.2023 whereby applicant has been charge sheeted under Section under Section 306 I.P.C.

8. Learned counsel for applicant submits that though the applicant is the husband of deceased, a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. According to the learned counsel for applicant, the offence under Section 306 I.P.C. has to be examined on a conjoint reading of the provisions contained in Sections 107 and 306 I.P.C. With reference to the material on record, he submits that as per the material collected by the Investigating Officer upto this stage, no abetment, instigation or conspiracy can be inferred against applicant in the commission of the crime in question. Moreover, no such circumstance has emerged on record on the basis of which it can be concluded that the deceased committed suicide on account of an immediate act of applicant. No instigation can be inferred from the conduct of applicant either. An offence under Section 306 I.P.C. is subject to trial evidence. To buttress his submission, he has relied upon the following judgements of this Court and Supreme Court:

(i). Sarvesh Vs. State of U.P. 2018 ADJ Online 0163.

(ii). Kanchan Sharma Vs. State of U.P. and Another 2021 SCC OnLine SC 737.

(iii). Mirza Iqbal alias Golu and Another Vs. State of U.P. and Another 2021 SCC OnLine SC 1251.

(iv). Mariano Anto Bruno and Another Vs. Inspector of Police 2022 SCC OnLine SC 1387.

(v). Kashibai and othara Vs. State of Karnataka, 2023, SCC OnLine SC 575.

9. Attention of the court was then invited to the statement of the son of applicant, who has categorically stated that his mother immolated herself.

10. Even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in custody since 29.05.2023. As such, he

has undergone more than five and a half months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. However, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He therefore contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

11. Per contra, the learned A.G.A. for State has vehemently opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused, therefore, he does not deserve any indulgence by this Court. According to learned A.G.A., the deceased committed suicide on account of the conduct of the applicant which fact is clearly established from the statements of the witnesses examined under Section 161 Cr.P.C. It is thus urged that no sympathy be shown by this Court in favour of applicant. However he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

12. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant, coupled with the fact that an offence under Section 306 I.P.C. has to be examined on a conjoint reading of the provisions contained in Sections 107 and 306 I.P.C, with reference to the material on record, upto this stage no abetment, instigation or conspiracy can be inferred against applicant in the commission of the crime in question, there is nothing on record to

suggest that the deceased committed suicide on account of an immediate act of applicant, an offence under Section 306 I.P.C is subject to trial evidence, the judgements of this Court and Apex Court as noted above, as per the statement of the son of applicant as noted above, the deceased has committed suicide, charge sheet has been submitted against applicant, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalised, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the clean antecedents of applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A in opposition to the present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

13. Accordingly, present application for bail is **allowed**.

14. Let the applicant- **Ramjan** involved in aforesaid case crime number be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner

whatsoever.

15. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison

Order Date :- 24.11.2023

YK