

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38800 of 2023

Applicant :- Mohammad Arif

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Pandey, Rakesh Kumar Mathur

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sanjay Pandey along with Mr. Rakesh Kumar Mathur, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Mohammad Arif seeking his enlargement on bail in Case Crime No. 30 of 2023, under Section 302 IPC and Section 3/5(1) The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station-Paschim Sharira, District-Kaushambi during the pendency of trial.

4. Record shows that an FIR dated 15.02.2023 was lodged by first informant-Shrimati and was registered as Case Crime No. 30 of 2023, under Section 302 IPC and Section 3/5(1) The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station-Paschim Sharira, District-Kaushambi. In the aforesaid FIR, 12 persons namely - (1) Mohammad Arif (applicant herein), (2) Abid Ali, (3) Tarannum Bano, (4) Tabassum Bano, (5) Husain, (6) Wazid Ali, (7) Ali Ahmad, (8) Mahmood Khan, (9) Mahboob, (10) Kudrat, (11) Banne and (12) Nawab have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused-Mohd. Arif (applicant herein) is said to have taken the daughter of first informant i.e. the deceased by alleging himself to be a Hindu on the promise that he will secure land for her. The land was also secured. Subsequently, Panchayat was held in which, the daughter of first informant was got converted to 'Islam'. In the Panchayat, the daughter of first informant was assaulted her, on account of which, she sustained injuries and

ultimately, succumbed to the same.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C.

7. However, it is apposite to mention here that prior to the FIR, information regarding the occurrence was given by the mother of the deceased i.e. Shrimati at the concerned Police Station. On the said information, the inquest (Panchyatnama) of the deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased could be categorized as the cause of death of deceased could not be ascertained. However, the Panch Witnesses concluded that the death of deceased is an unnatural death. Thereafter post mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was ante-mortem strangulation. The Autopsy Surgeon found following ante-mortm injuries on the body of deceased;-

"1. A ligature mark of size cm x 9 cm present on right side of the neck horizontally above thyroid cartilage.

2. Ecchymosis present on neck, upper chest, right shoulder and right arm."

8. During course of investigation, Investigating Officer examined various witnesses namely- (1) Shrimati, (2) Shrishti Singh, (3) Km. Barkha, (4) Manoj Singh, (5) Gulshan Singh, (6) Smt. Kanchan Singh, (7) Smt. Sandhya Singh under Section 161 Cr.P.C. The complicity of applicant in the crime in question surfaced in the statement of two witnesses namely Shrishti Singh and Barkha, who are the daughter of the deceased. They have categorically stated that applicant had taken the mother of the witnesses and ultimately brought the dead body of their mother. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of present applicant and 9 other persons namely - (1) Abid Ali, (2) Smt. Tarannum Bano, (3) Smt. Tabassum Bano, (4) Wazid Ali, (5) Mahmood Khan, (6) Mahboob Khan, (7) Kudrat Khan, (8) Banne Khan and (9) Nawab Khan is established in the crime in question. He, accordingly, submitted the charge sheet dated 05.03.2023 whereby applicant Mohammad Arif has been charge sheeted under Section 302 IPC and Sections 3/5(1) The Uttar Pradesh Prohibition of Unlawful Convesion of Religion Act, 2021 whereas the other accused have been charge sheeted under Sections 3/5(1) The Uttar

9. Learned counsel for applicant submits that though applicant is named and charge sheeted accused but he is innocent. Applicant has been falsely implicated in the crime in question. Present case is a case of circumstantial evidence and therefore, there is no eye witness of the occurrence. The complicity of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by the Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622 (Paragraph 152)**. However, up to this stage, none of the parameters laid down by the Apex Court in aforementioned judgment to infer the guilt of an accused in a case based upon circumstantial evidence are satisfied against applicant. It is then contended that the only incriminating circumstance, which has emerged against applicant is the statements of the daughters of deceased namely Shrishti Singh aged about 14 years and Barkha Singh aged about 9 years. Except for above, there is nothing to establish the complicity of applicant in the crime in question.

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 jail since 16.02.2023. As such, he has undergone more than 8 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he submits 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. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The complicity of applicant in the crime in question stands established as per the statements of 2 witnesses namely Shrishti Singh and Barkha Singh examined by the Investigating Officer under Section 161 Cr.P.C. Both the witnesses are child witnesses yet there is no such material on record to discard their testimony on the ground of credibility or reliability. Both the witnesses have stated that the deceased had accompanied the applicant and thereafter, her dead body was brought by the applicant and dropped at home. As such, the deceased was in the company of the applicant himself. The cause of death of deceased

as per the medical opinion is ante-mortem strangulation. Prima-facie, the complicity of the applicant is, therefore, established in the crime in question. Up to this stage, no such material has been brought on record on behalf of applicant on the basis of which, the innocence of the applicant could be inferred. It is thus urged that no sympathy be shown by this Court in favour of applicant.

12. When confronted with above, the learned counsel for applicant could not overcome the same.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that the submissions urged by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varied submission urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

14. As a result, present application for bail fails and is liable to be rejected.

15. It is accordingly **rejected**.

Order Date :- 17.10.2023

Vinay