

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39766 of 2023

Applicant :- Chote @ Ramesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Manoj Kumar Srivastava, 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-Chote @ Ramesh seeking his enlargement on bail in Case Crime No. 273 of 2022, under Section 302 IPC, Police Station-Delhigate, District-Aligarh during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 01.09.2022, a prompt FIR dated 01.09.2022 was lodged by first informant-Rajesh Kumar (husband of the deceased) and was registered as Case Crime No. 273 of 2022, under Section 302 IPC, Police Station-Delhigate, District-Aligarh. In the aforesaid FIR, applicant-Chote @ Ramesh has been nominated as solitary named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused cause the death of Shalu (wife of the first informant).

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. The inquest (Panchyatnama) of the deceased was conducted on 01.09.2022. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was said to be ante-mortem injuries sustained by deceased. 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 Asphyxia as a result of ante-mortem strangulation. The Autopsy Surgeon found following ante-mortm injuries on the body of deceased;-

"1. A ligature mark of sized 21 cm x 1 cm in front of neck, 6 cm below from the Rt. ear, 6 cm below from the Lt. ear, 5 cm below from the chin with gap of 12 cm on back side of neck, Horizontal ligature mark. Base of neck in brown reddish and soft. Subcutaneous tissue underneath the ligature mark ecchymosed. Ligature mark is below the thyroid cartilage.

2. Two nails mark present on Lt. clavicle regions.

3. Traumatic swelling over Rt. side of forehead size 4 x 4 cm.

4. Abrasion over lateral side of Rt. eye brow size 2 x 2 cm.

5. Bluish discoloration over Rt. eye size 4 x 2.5 cm.

6. Contusion over upper outer part of Rt. gluteal region.

7. Abrasion over tip of Rt. great toe size 2 x 2 cm.

8. Multiple abrasion over all the Lt. foot size 9 x 4 cm. Ligature material not seen around the neck/dead body and was not produced by police during PM examination."

7. During course of investigation, Investigating Officer examined first informant and other witnesses namely -

(i). Km. Nishu D/o Mahaveer Singh - Eye witness.

(ii). Smt. Pavitra Devi W/o Mahaveer Singh - Other witness.

(iii). Smt. Mamta W/o Sunil Kumar - Other witness.

(iv). Yuvraj S/o Rajesh Kumar - Other witness.

(v). Mayank S/o Kanhaiya - Other witness.

(vi). Kapil Kumar S/o Parsadi Lal - Other witness.

(vii). Kanhaiya S/o Roshan Lal - Other witness.

(viii). Lala @ Jay Prakash S/o Vijay Pal Singh - Other witness.

(ix). Dr. Wasim Akram - Doctor.

Some of the witnesses examined under Section 161 Cr.P.C. are inmates of the house where the occurrence had occurred. The statement of the witnesses so examined is consistent to the effect that applicant, who is a relative of the deceased, was also present in the house but abruptly left the home after the occurrence was discovered. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that offence alleged against applicant is fully established. He, accordingly, submitted the charge sheet dated 23.11.2022 whereby applicant has been charge sheeted under Section 302 IPC.

8. Learned counsel for applicant contends that though the applicant is named as well as charge sheeted accused yet he is liable to be enlarged on bail. There is no eye witnesses of the occurrence. The applicant has been implicated in the crime in question only on the basis of suspicion. Neither any recovery has been made from the applicant nor any strong motive has emerged against applicant for committing the crime in question. According to the learned counsel for applicant, suspicion, howsoever, strong cannot taken the place proof. On the above premise, the learned counsel for applicant contends that applicant is liable to be enlarged on bail.

9. 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 02.09.2022. As such, he has undergone more than 1 year and approximately 1 and 1/2 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. It is thus urged 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.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a charge sheeted accused, therefore, he does not deserve any indulgence by this Court. As per the statement of the witnesses examined under Section 161 Cr.P.C., applicant was in the house where the occurrence had taken place. Moreover, the witnesses have also deposed that immediately after the occurrence was discovered, the applicant went out of the house. As such, the burden is upon the applicant himself to not only explain the manner of occurrence but also his innocence in

terms of Section 106 of the Evidence Act. However, the applicant has miserably failed to discharge the said burden up to this stage. The statement of independent witnesses examined under Section 161 Cr.P.C. has further indicated that the applicant was in relationship with the deceased, even though, the deceased was a married lady and the wife of the first informant. On the above premise, the learned A.G.A. contends that applicant does not deserve any sympathy by this Court.

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

12. 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 motive behind the occurrence has clearly emerged against the applicant in the statement of eye witnesses namely Neeshu, copy of which is on record at page 48 of the paper book, the applicant was in the house at the time of occurrence, as per the statement of the 3 witnesses who are inmates of the house, applicant is alleged to have left the house immediately after the occurrence for which, no explanation has come forward, applicant has miserably failed to discharge the burden in terms of Section 106 of the Evidence Act, therefore, irrespective of the varied submissions 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.

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

14. It is accordingly **rejected**.

Order Date :- 28.10.2023

Vinay