

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40550 of 2023

Applicant :- Girija Kushwaha

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Chandra Kushwaha

Counsel for Opposite Party :- G.A.,Brijesh Kumar Mishra

with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39098 of 2023

Applicant :- Durgesh Kushwaha

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Chandra Kushwaha

Counsel for Opposite Party :- G.A.,Ashok Kumar,Brijesh Kumar Mishra

with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40395 of 2023

Applicant :- Haribhajan Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamalesh Kumar Nishad,Ram Awadh Maurya

Counsel for Opposite Party :- G.A.,Ashok Kumar,Brijesh Kumar Mishra

and

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11336 of 2023

Applicant :- Madhuri

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kamalesh Kumar Nishad,Ram Awadh Maurya

Counsel for Opposite Party :- G.A.,Brijesh Kumar Mishra

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ram Chandra Kushwaha, the learned counsel for applicants-Girija Kushwaha and Durgesh Kushwaha, Mr. Ram Awadh Maurya, the learned counsel for applicants-Haribhajan Singh and Madhuri, who has filed an application for anticipatory bail, the learned A.G.A. for State and Brijesh Kumar Mishra, the learned counsel representing first informant.

2. Perused the Court.

3. These applications for bail and anticipatory bail have been filed by applicants- Girija Kushwaha, Durgesh Kushwaha, Haribhajan Singh and Madhuri seeking their enlargement on bail/anticipatory bail in Case Crime No. 275 of 2022 under Sections 306 and 506 I.P.C., Police Station-Tarkulwa, District- Deoria, during the pendency of trial.

4. Record shows that marriage of Madhuri was solemnised with Praveen Kushwaha son of Nand Prasad Kushwaha i.e. the deceased. However, the marital relationship between them entered into discord. Accordingly, proceedings under Section 125 Cr.P.C. were initiated by the wife Madhuri claiming maintenance whereas the husband Praveen instituted a suit for restitution for conjugal rights under Section 9 of the Hindu Marriage Act. Counsel for the applicants contend that the suit under Section 9 of Hindu Marriage Act was decreed exparte. In spite of above the wife Madhuri refused to rejoin her husband Praveen Kushwaha son of deceased Nand Prasad Kushwaha. Subsequently, Nand Prasad Kushwaha, father of Praveen Kushwaha, husband of Madhuri committed suicide on 16.11.2022. The dead body of the deceased was retrieved by the police, which was hanging on a tree. Thereafter, the inquest (Panchayatnama) of the body of deceased was

conducted on 17.11.2022.. In the opinion of the witnesses of inquest (panch witnesses), the nature of death of deceased was categorized as suicidal and the cause of death of the deceased was said to be hanging. Subsequent to above, 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 hanging. The Autopsy Surgeon, found following ante-mortem injuries on the body of the deceased:-

"i Size of neck 36 cme.

2. Size of ligature mark 33x 2 cm, knot present behand right ear on cutting of ligature mark Glistering tissue present.

a) 5 cm below left ear.

b) 505 cm below chin.

c) 7 cm above sternum.

d) judt below right ear pinna.

5. After aforementioned proceedings were undertaken, the first informant Pradeep Kumar Kushwaha (son of the deceased Nand Prasad Kushwaha) lodged a delayed F.I.R. dated 19.11.2022 and was registered as Case Crime No. 275 of 2022 under Section 306 I.P.C., Police Station-Tarkulwa, District- Deoria. In the aforesaid F.I.R. five persons namely Haribhajan Singh, Madhiri, Durgesh, Girja Kushwaha and Sarsawati Devi, have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that on account of pressure exerted by the accused persons upon the deceased Nand Prasad Kushawaha that he should pay a sum of Rs. 10 lakhs for termination of marital relationship between

Mathuri and Praveen Kushwaha, the father of Praveen Kushwaha namely Nand Prasad Kushwaha committed suicide.

7. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of aforesaid case crime number in terms of Chapter XII Cr.P.C. During course of investigation, Investigating Officer examined first informant and other witnesses namely Pradeep Kumar Kushwaha, Shatrughan Kushwaha, Ashok Kumar, Harishchand Kushwaha, Pramila Maurya, Harish Kumar, Praveen Kumar, Dwarika Kushwaha under Section 161 Cr.P.C. Investigating Officer further recovered a suicide note of the deceased. The same was sent to the FSL to verify the handwriting therein with the specimen of handwriting of the deceased. The Scientific Officer Forensic Science Laboratory, Gorakhpur submitted his report dated 28.04.2023 where in he has opined that specimen of handwriting of Nand Prasad Kushwaha tallies with the disputed document. On the basis of above and other material collected by the Investigating Officer during course of investigation, he came to the conclusion that complicity of all the named accused is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 16.06.2023 whereby three of the named accused namely Haribhajan Singh, Durgesh, Girja Kushwaha have been charge sheeted under Section under Sections 306 and 506 I.P.C whereas investigation against two of the other named accused namely, Madhiri and Sarsawati is said to be going on.

8. Learned counsel for applicants submits that though the applicants are named as well as charge-sheeted accused yet they are liable to be enlarged on bail. According to the learned counsel for applicants, 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, he submits that no abetment, instigation or conspiracy can be inferred against applicants in the commission of the crime in question. Moreover, no such circumstance has emerged on record on the basis of which it can be conclusively concluded that the deceased committed suicide on account of an immediate act of applicants. No instigation can be inferred from the conduct of applicants either. Moreover, 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). Gurcharan Singh Vs. State of Punjab (2020) 10 SCC 200

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

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

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

(vi). Kashibai and others Vs. State of Karnataka, 2023, SCC OnLine SC 575.

9. It is then contended that the suicide note of the deceased which was sent to F.S.L, Laboratory does not throw any light as no reason on account of which, the deceased committed suicide is mentioned therein. Thus the reason behind committing suicide is shrouded in obscurity. It is thus urged that applicants are liable to be enlarged on bail.

10. Mr. Ram Chandra Kushwaha, the learned counsel for applicant- Girija Kushwaha further submits that since applicant Girija Kushwaha is a lady, therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C. The above

arguments have also been adopted by Mr. Ram Awadh Maurya, the learned counsel for applicant- Madhuri, who has filed an application for anticipatory bail. Referring to the judgement of Supreme Court in **Sushila Aggarwal Vs. State (NCT OF DELHI)-2010 SCC OnLine SC 98**, he submits that irrespective of the fact that charge-sheet has been submitted yet the application for anticipatory bail can be considered. On overall conspectus of the facts as noted herein above, it is urged that applicants are liable to be enlarged on bail/anticipatory bail.

11. Even otherwise applicants Girja Kushwaha and Madhuri are of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicant Durgesh Kushwaha has criminal history of three cases, which has been sufficiently explained in the supplementary affidavit filed in bail application of applicant Duresh Kushwaha. With reference to the three Judges Bench Judgement of the Supreme Court in **Brijmani Devi Vs. Pappu Kumar and Another, (2022) 4 SCC 497**, the learned counsel for applicant-Durgesh Kushwaha submits that an accused cannot be denied bail simply on the ground of criminal history. Applicants are in custody since 17.05.2023 and 16.05.2023. As such, they have undergone more than six months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, therefore the entire evidence sought to be relied upon by the prosecution against applicants stands crystallised. However, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. They therefore contend that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

12. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since the applicants are named as well as charge-sheeted accused, therefore, they do not deserve any indulgence by this Court. The deceased is the father-in-law of applicant-Madhuri, who has committed suicide on account of the conduct of named/charge sheeted accused. The death of the deceased is highly unnatural and is clearly attributable to the named accused including applicants. It is thus urged that no sympathy be shown by this Court in favour of applicants. However they could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

13. Having heard the learned counsel for applicants, 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 applicants, coupled with the fact that present case is a case of suicidal death, therefore, the same is covered under Section 306 I.P.C., an offence under Section 306 I.P.C. has to be considered on a conjoint reading of Sections 107 and 306 I.P.C, upto this stage it cannot be definitely concluded that applicants have abetted, instigated or conspired 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 applicants, no instigation can be inferred from the conduct of applicants either, an offence under Section 306 I.P.C is subject to trial evidence, no mens-rea can be derived against applicants from their conduct qua the crime in question, the judgement of this Court as well as Apex Court as noted above, since applicants Girja

Kushwaha and Madhuri are ladies, therefore, they are entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C. the clean antecedents of applicants Girja Kushwaha and Madhuri, explained criminal history of applicant Duresh Kushwaha, the three Judges Bench Judgement of the Supreme Court in **Brijmani Devi (supra)**, police report (charge-sheet) under Section 173 (2) Cr.P.C. has already been submitted against Girija Kushwaha, Durgesh Kushwaha and Haribhajan Singh therefore the entire evidence sought to be relied upon by the prosecution against aforesaid applicants stands crystalized, yet in spite of above, the learned A.G.A. and the learned counsel for first informant could not point out any such circumstance from the record necessitating the custodial arrest of aforesaid applicants during the course of trial, the judgement of Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), the period of incarceration undergone, therefore irrespective of the objections raised by learned A.G.A and the learned counsel for first informant in opposition to the present applications for bail / anticipatory bail but without expressing any opinion on the merits of the case, applicants have made out a case for bail/anticipatory bail.

14. Accordingly, present applications for bail and the application for anticipatory bail filed by applicant Madhuri are liable to be allowed..

15. They are accordingly **allowed**.

16.. Let the applicants- **Girija Kushwaha, Durgesh Kushwaha and Haribhajan Singh** be released on bail whereas applicant **Madhuri** upon her arrest shall be released on anticipatory bail in aforesaid case crime number on their furnishing a personal bond

each 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) Applicants will not tamper with prosecution evidence.

(ii) Applicants 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) Applicants will not indulge in any unlawful activities.

(iv) Applicants will not misuse the liberty of bail in any manner whatsoever.

17. 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 applicants and send them to prison

Order Date :- 28.11.2023

YK