

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41574 of 2023

Applicant :- Nazim

Opposite Party :- State of U.P.

Counsel for Applicant :- Rishabh Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Shashank Singh, Advocate, holding brief of Mr. Rishabh Agarwal, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant Nazim, seeking his enlargement on bail in Case Crime No. 289 of 2021 of 2023, under Sections 302, 34 IPC, Police Station-Bahadurgarh, District Hapur during the pendency of trial.

4. First bail application of applicant was rejected vide order dated 13.7.2022, passed in Criminal Misc. Bail Application No. 11250 of 2022 (Nazim Vs. State of U.P). For ready reference, the same is reproduced herein under:

"Heard learned counsel for the applicant, Sri Sanjay Singh, learned AGA-I for the State, learned counsel appearing for the complainant and perused the record.

The instant bail application has been filed on behalf of the applicant with a prayer to release him on bail in Case Crime No. 289 of 2021, under Sections 302, 34 IPC, Police Station Bahadurgarh, District Hapur, during pendency of trial.

After hearing learned counsel for the applicant and learned A.G.A., and perusing the averments made in the present bail application as well as rejection order, this Court is of the opinion that learned counsel for the applicant could not point out any good ground for grant of bail to the applicant.

Accordingly, the bail application filed on behalf of the applicant

is hereby rejected.

The trial court is directed to expedite the trial of the present case and conclude the same, expeditiously, preferably within a period of six months from the date of production of a certified copy of this order, if there is no legal impediment. It is made clear that the trial court shall not grant any unnecessary adjournment to either of the party. "

5. Record shows that in respect of an incident which is alleged to have occurred on 23.9.2021, a prompt F.I.R. dated 23.9.2021 was lodged by first informant Ramjani and was registered as Case Crime No.289 of 2021 of 2023, under Sections 302, 34 IPC, Police Station- Bahadurgarh, District Hapur. In the aforesaid F.I.R., two persons namely, Hina and Nazim (applicant herein) have been nominated as named accused.

6. It is apposite to mention here that inquest and post mortem of the body of deceased were conducted prior to the lodging of aforementioned F.I.R. After the occurrence dated 23.9.2021 had occurred, the information regarding same was given by first informant at the concerned Police Station. On the aforesaid information, the inquest (panchayatnama) of the body of deceased was conducted. 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 specified as hanging. Thereafter post mortem of the body of deceased was conducted on 24.9.2022. In the opinion of autopsy surgeon who conducted autopsy of the body of deceased, cause of death of deceased was asphyxia due to ante mortem injuries and may be due to hanging/due to ante-mortem head injury. However, the autopsy surgeon found following ante-mortem injuries on the body of the deceased:

"1. A reddish brown paschanutiesed abraded with sift brown scabs ligature marks present obesely in upper part of neck measuring 12 cm in front X 01 cm width, 05 cm below chin and 02 cm below left angle if mutable and 3 cm below right angle of mandible and 06 cm below right ear pinna hand 13 cm x 1 cm insurment on rightit side of frit and right side of neck and presently ligature match in the present 2 cm area.

2. Soft linear scabbed abrasion 1 cm on right side of neck, 05 cm below right angle and mumble.

3. Soft scabbed scabbed abrasion 0.5 x 0.5 cm on right side of

nope of neck 06 cm below and behind right ear lobe and 1.5 cm below right side of hair line on the ligature mark.

4. B/L conjunction of eyes harming multiple daened blood certs.

5. Face is contended and slightly swollen with tongue billion in between the tooth and some blood in the mouth present in oral.

6. Sole of present in all face."

7. Palms P/L were cared blushed cleanchd.

7. During course of investigation, Investigating Officer examined first informant and other witnesses under section 161 Cr.P.C. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of named accused is fully established in the crime in question. He, accordingly submitted the charge sheet dated 23.10.2021, whereby named accused have been charge-sheeted under sections 302, 34 IPC.

8. After submission of aforementioned charge sheet cognizance was taken upon same by concerned Magistrate. As offence complained of is triable by Court of sessions, accordingly, concerned Magistrate committed case was to the Court of Sessions. Resultantly, Sessions Trial No. 3 of 2022 (State Vs. Hina) came to be registered, and is now said to be pending in the Court of Additional District Judge (SC/ST) Hapur.

9. The trial judge proceeded with the trial. Charges were framed against the charge sheeted accused who denied the same and pleaded innocence. Resultantly the trial procedure commenced. Thus burden fell upon prosecution to prove the charges so framed. Accordingly, the prosecution in discharge of aforesaid burden adduced. PW-1 Ramjani (first informant), P.W.2 Shafiq (brother in law of deceased) and PW-3 Shadil Shekh (independent witness). PW-1 Ramjani (first informant) in his statement before court below which is on record at page 65 of the paper book has not supported the FIR. PW-2 Shafiq (brother in law of deceased) in his deposition before court below has also not supported the FIR. He has been declared hostile. PW-3 Shadil Shekh in his deposition before court below has also not supported the prosecution story. It is apposite to mention here that named and charge sheeted accused are alleged to have made extra judicial confession before this witness which fact was subsequently disclosed by him to PW-1

Ramjani (first informant). However, this witness in his deposition before court below has resiled from his statement under Section 161 Cr.P.C. and has now pleaded ignorance. This witness has further stated that no statement of this witness under Section 161 Cr.P.C. was recorded by the Investigating Officer. He has also denied the factum of having disclosed the first informant about extra judicial confession made by named accused before him.

10. On the aforesaid premise, learned counsel for applicant submits that the three prosecution witnesses of fact have not supported the F.I.R.. It is next contended that complicity of the applicants in the crime in question is sought to be alleged on the basis of the confessional statement. Confession is a very weak type of evidence cannot be relied up ipso facto. However, if the confession gets corroborated then it can be relied upon. To buttress his submission he has relied upon judgement of Supreme Court in **Kashmira Singh Vs. State of M.P. 1952 (1) SCC 275**. He submits that there is nothing on record to corroborate the alleged confessions made by accused. Attention was invited to the post mortem report of the deceased and on the basis of opinion expressed by the autopsy surgeon qua the cause of death of the deceased, learned counsel for applicant submits that present case is a case of suicidal death and not homicidal. As such, applicant is liable to be enlarged on bail.

11. 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 26.9.2021. As such, he has undergone more than two years and two months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. The 3 prosecution witnesses of fact examined upto this stage have not supported the FIR. However, upto this stage, no such, circumstance has emerged on record necessitating the custodial arrest of 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.

12. 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. Attention of the Court was then invited to the charge sheet, copy of which is on record at page 2 of the supplementary affidavit. Learned A.G.A. further contends that four prosecution

witnesses of fact are yet to be examined before Court below. The innocence of the applicant cannot be inferred simply on the basis of statement of three prosecution witnesses of fact who have deposed before Court below. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant in support of the present application for bail with reference to the record at this stage.

13. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that the three prosecution witness of fact namely, P.W.1 Ramjani (first informant) P.W.2 Shafiq (brother-in-law) of deceased and P.W.3-Shadil Sheikh have deposed before court below upto this stage, have not supported the F.I.R., the remaining prosecution witnesses of fact nominated in the charge sheet are not crucial witness qua the manner of occurrence, the police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized, yet inspite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating custodial arrest of applicant during pendency of trial, the period of incarceration undergone, the clean antecedents of applicant, therefore irrespective of the objection raised by the learned A.G.A. and the learned counsel for first informant, but without making any comment on the merits of the case, the applicant has made out a case for bail.

14. Accordingly the bail application is **allowed**.

15. Let the applicant **Nazim** be released on bail in aforesaid case crime number 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) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

16. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 15.12.2023

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