Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43050 of 2023

Applicant :- Gulveer @ Gullu
Opposite Party :- State of U.P.
Counsel for Applicant :- Tripurari Pal
Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45044 of 2023

Applicant :- Jony
Opposite Party :- State of U.P.
Counsel for Applicant :- Devendra Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Prakash Veer Tripathi, Advocate holding brief of Mr. Tripurari Pal, the learned counsel for applicant-Gulveer @ Gullu and Mr. Devendra Kumar Singh for applicant-Jony and the learned A.G.A. for State.

These applications for bail have been filed by applicants Gulveer @ Gullu and Jony seeking their enlargement on bail in Case Crime No.139 of 2023, under Section 306 IPC, police station Barla, district Aligarh, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 16.07.2023, a prompt first information report dated 16.07.2023 was lodged by first informant, namely, Pushpendra (father of one of the deceased namely Shalini and uncle of another deceased namely Khushboo) and was registered as Case Crime No.0139 of 2023, under Section 306 IPC, police Station Barla, district Aligarh. In the aforesaid FIR, one unknown person has been arraigned as solitary accused.

The gravamen of the allegations made in the first information report is to the effect that a small Keyboard mobile phone (Ringme) was recovered from the niece of the first informant (Khushboo), which was taken away by the father of the first informant (grandfather of the deceased). It appears that on account of some instigation, the daughter and niece of the first informant committed suicide.

After above-mentioned first information report was lodged, Investigating Officer proceeded with statutory investigation in terms of Chapter XII CrPC. During course of investigation, he recorded the statement of first informant and other witnesses, namely, Pushpendra, Natthi Singh, Anil Kumar, Seetu and Ram Beti under Section 161 CrPC. However, nothing concrete emerged in the statement of the aforesaid witnesses. Thereafter, Keyboard mobile phone (Ringme) which was taken away by the father of the first informant was handed over to the Investigating Officer. The case-diary of the concerned case crime number relating to present applications for bail show that the recovered phone was given by the first informant to the police as is evident from CD No.1 dated 16.07.2023. Thereafter, the aforesaid mobile phone was handed over to the Surveillance Cell for further investigation. Subsequently, the original IMEI of the recovered mobile phone was discovered. It is at this juncture that the complicity of present applicants i.e. Gulveer @ Gullu and Jony surfaced in the crime in question. As suspicion had emerged in the statement of first informant regarding complicity of present applicants in the crime in question, deeper investigation was accordingly conducted with regard to aforesaid mobile phone given by the first informant to the police. Upon thorough scrutiny, it was discovered that the recovered mobile phone was registered with IMEI No.359912103827161 in the name of accused-applicant Jony and on this IMEI Sim was used with mobile number 9720720232. Upon further investigation, Investigating Officer discovered that calls were repeatedly made from mobile phone number 7668700846 belonging in the name of Sahib Singh, the elder brother of accused-applicant Gulveer @ Gullu. There are as many as 185 incoming and outgoing calls made from this mobile number to the mobile number aforementioned. Another accused-applicant Jony was using mobile phone number 9328390813 from which, 212 incoming and outgoing calls on the aforementioned mobile phone was detected. Another mobile number used by accused Jony is 9627565532 which is also in the name of Jony from which 103 incoming and outgoing calls were made.

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 applicants is fully established in the crime in question. Accordingly, he submitted the charge-sheet dated 15.09.2023, whereby applicants have been charge-sheeted under Section 306 IPC.

Learned counsel for the applicants contends that applicants are not named in the first information report. They have been falsely implicated in the crime in question. Though the applicants are charge-sheeted accused inasmuch as the charge-sheet has been submitted against applicants on

15.09.2023 yet they are liable to the enlarged on bail. The present case is a case of suicidal death and therefore covered under Section 306 IPC. An offence under Section 306 IPC is to be examined on a conjoint reading of Sections 107 and 306 IPC. The only evidence which is alleged against the applicants are common threat. The statement of the witnesses examined under Section 161 CrPC is to the effect that the deceased were in conversation with the present applicants consistently and at short intervals. With reference to above, the learned counsel for applicants contends that even if the said fact is taken to be correct, then simply on the ground that the mobile phones of the deceased were taken away by their grand-father and therefore the deceased were enable to make conversations with the applicants cannot be treated as abetment, instigation or conspiracy on the part of the present applicants. Moreover, there is nothing on record which may go to show that the deceased committed suicide on account of an immediate act of applicants nor any instigation can be inferred against the applicants from their conduct. More over, an offence under Section 306 IPC read with Section 107 IPC is subject to trial evidence. To buttress his submissions, he has referred the following judgements :- **Sarvesh Vs. State of U.P. 2018 ADJ Online 0163** and that of the Supreme Court in **Gurcharan Singh Vs. State of Punjab 2020 (10) SCC 200; Kanchan Sharma Vs. State of U.P. (2021) 13 SCC 806; Mirza Iqbal Vs. State of U.P. 2021 SCC OnLine SC 1251 and Sabitri Samantaray Vs. State of Odisha 2022 SCC OnLine SC 673; and Kashibai & Others Vs. The State of Karnataka (arising out of SLP (Crl.) No.8584/2022)**. On the basis of above, it is thus urged that applicants are liable to be enlarged on bail.

Even otherwise, the applicants are men of clean antecedents having no criminal history to their credit except the present one. They are in jail since 21.07.2023. As such, they have undergone more than four months of incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicants therefore, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized. However, up to this stage, no such circumstance has emerged on record on the basis of which it can be said that custodial arrest of applicants is absolutely necessary during the pendency of trial. It is thus urged that the 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicants are charge-sheeted accused therefore, they do not deserve any indulgence by this Court. 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.

Having heard the learned counsel for applicants, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that prima facie none of the ingredients of Section 107 IPC are satisfied against applicants up to this stage, there is nothing on record to indicate abetment, instigation or conspiracy against applicants or the deceased committed suicide on account of an immediate act of applicants, more over, an offence under Section 306 IPC read with Section 107 IPC is subject to trial evidence, the clean antecedents of applicants, the period of incarceration undergone, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicants, therefore the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized, yet inspite of above the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of the applicants during pendency of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal and another Vs. State of Maharashtra and another, 2023 Livelaw SC 373 (Paragraph 5)**, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present applications for bail but, without making any comment on the merits of the case, the applicants have made out a case for bail.

Accordingly, the bail applications are **allowed**.

Let the applicants **Gulveer @ Gullu and Jony**, involved in aforesaid case crime number, be released on bail on their furnishing personal bond with 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 applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under section 229-A I.P.C.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under

section 82 Cr.P.C., may be issued and if applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under section 174-A I.P.C.

(iv) The applicants 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 applicants 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 them 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.

However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their 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 conditions mentioned above.

Order Date :- 1.12.2023.
Rks.

Digitally signed by :-
RAJESH KUMAR SINGH
High Court of Judicature at Allahabad