

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43630 of 2023

Applicant :- Himanshu Yadav

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ramesh Chandra Yadav,Raj Karan Yadav

Counsel for Opposite Party :- G.A.,Yogendra Singh

Hon'ble Rajeev Misra,J.

Heard Mr. Ramesh Chandra Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mr. Yogendra Singh, the learned counsel representing first informant-opposite party-4.

This application for bail has been filed by applicant Himanshu Yadav seeking his enlargement on bail in Case Crime No.119 of 2023, under Sections 376, 305, 452, 323, 504, 506 IPC, Section 3/4 Pocso Act and Section 3(2)5 SC/ST Act, police station Naraini, district Banda, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 29.04.2023, a delayed first information report dated 17.05.2023 was lodged by first informant, namely, Sumera (father of the prosecutrix) and was registered as Case Crime No.0119 of 2023, under Sections 376, 306, 452, 323, 504, 506 IPC, Section 3/4 Pocso Act and Section 3(2)(V) SC/ST Act, police station Naraini, district Banda. In the aforesaid F.I.R., applicant Himanshu Yadav has been nominated as solitary named accused.

The gravamen of the allegations made in the first information report is to the effect that the named accused Himanshu Yadav entered the house of the first informant on 29.04.2023 at about 11.00 p.m. Thereafter, named accused dislodged the modesty of the prosecutrix, namely, 'X'. Subsequently, the daughter of the first informant, namely, prosecutrix committed suicide by hanging herself.

It is apposite to mention here that prior to the lodging of the first information report, the information regarding the occurrence was already submitted by the father of the deceased, namely, Sumera i.e. first informant at the concerned police station. It is on this information that the inquest (Panchayatnama) of the body of deceased was conducted on 30.04.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the

deceased was categorized as suicidal and the cause of death of the deceased was said to be hanging. Thereafter, the post-mortem of the body of deceased was conducted on 30.04.2023. The autopsy surgeon, who conducted autopsy of body of the deceased, opined that the cause of death of the deceased is Asphyxia as a result of ante-mortem hanging. The autopsy surgeon, found following ante-mortem injuries on the body of deceased, which is explicit from the recital contained at page 39 of the paper book :-

"Ante-mortem injury :

- 1. Ligature around Neck = 29 cm x 2.5 cm, cirthgap = 3 cm.**
- 2. Below from Left year 2.5 cm, Right ear 4.0 cm, Chin 6 cm.**
- 3. Left side knot.**
- 4. Right side saliva present.**
- 5. On cut section subcutaneous tissue under neath ligature mark white hard & glistening."**

As per the post-mortem report of the deceased, certain samples were taken from the body of deceased for pathological/chemical examination.

It is only after the proceedings of inquest and post-mortem had been conducted that the aforementioned first information report was lodged.

After above-mentioned first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. Investigating Officer examined the first informant (Sumera) and following witnesses, namely, Dasuva (real uncle); Shambhoo (maternal brother); Km. Sonu (sister); Km. Pooja (sister); Smt. Bholiya (aunt) of the deceased and one Kailash Yadav, who is neighbour of first informant under Section 161 CrPC. The witnesses so examined have substantially supported the F.I.R. 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 applicant is fully established in the crime in question. Accordingly, he submitted the charge-sheet dated 12.07.2023, whereby applicant has been charge-sheeted under Sections 376, 305, 452, 323, 504, 506 IPC, Section 3/4 Pocso Act and Section 3(2)5 SC/ST Act.

Learned counsel for the applicant contends that though the applicant is a named as well as charge-sheeted accused, yet he is liable to be enlarged on bail. The medical evidence neither supports the charge-sheet nor the prosecution story

as unfolded in the FIR. The autopsy surgeon, who conducted autopsy of body of the deceased, did not find any other injury on the body of deceased except ligature mark. The samples were taken from the body of deceased to ascertain as to whether sexual assault was committed upon the prosecutrix or not but, till date, neither there is any supplementary medico legal report of the prosecutrix nor there is any FSL report as informed by the learned A.G.A. It is next contended that only evidence that has come against the applicant is in the statement of the witnesses referred to above is that the applicant was seen coming out from the house of the prosecutrix. However, there is no link evidence in support of the same. He further contends that offence under Section 305 IPC is to be considered on a conjoint reading of Sections 305 and 107 IPC. Moreover, offence under Section 305 IPC is subject to trial evidence. However, as per the material collected by the Investigating Officer up to this stage it cannot be definitely concluded that applicant has abetted, instigated or conspired in the commission of crime in question. No such material has emerged as yet on the basis of which it can be said that the deceased committed suicide on account of an immediate act of the applicant. To buttress his submission, he has referred to the following judgements :- **Sarvesh Vs. State of U.P. 2018 ADJ Online 0163 and that of the Supreme Court in 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).** He, therefore, contends that applicant is liable to be enlarged on bail.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in custody since 19.05.2023. As such, he has undergone more than five months of incarceration. The police report in terms of Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged that the 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.

Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that the deceased was a young girl aged about 16 years who committed suicide on account of the conduct of applicant. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant

with reference to the record at this stage. No such material could be pointed out by them from the record on the basis of which it can be conclusively concluded that the applicant has abetted, instigated or conspired in the commission of crime in question either.

Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made, coupled with the fact that the only evidence that has come against applicant is that he was seen coming out from the house of prosecutrix, up to this stage there is nothing on record to show that applicant has abetted, instigated or conspired in the commission of crime in question, from the record it cannot be inferred that the deceased had committed suicide on account of an immediate act of the applicant, the bona fide of the applicant is explicit from the fact that except for the ligature mark, no other ante-mortem injury was found by the autopsy surgeon on the body of the deceased which fact is evident from the post-mortem report of the deceased, the medical evidence does not support the FIR, abetment is a question of fact and therefore subject to trial evidence, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet in spite of above the learned A.G.A. nor the learned counsel for first informant could point out from the record any such circumstance necessitating the custodial arrest of the applicant during the pendency of trial, the judgement of the Supreme Court in **Sumit Subhashchandra Gangwal and another Vs. State of Maharashtra and another, 2023 Livelaw SC 373 (Paragraph 5)**, the clean antecedents of the applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail but, without making any comments on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Himanshu Yadav**, involved in aforesaid case crime number, be released on bail on his furnishing a 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 applicant shall file an undertaking to the effect that he 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law, under section 174-A I.P.C.

(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 him 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 applicant, shall have serious repercussion on his 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 :- 9.11.2023.

Rks.