

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43660 of 2023

Applicant :- Sudama Dixit

Opposite Party :- State of U.P.

Counsel for Applicant :- Pooja Srivastava, Ashish Kumar, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard V. P. Srivastava, the learned Senior Counsel assisted by Ms. Pooja Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

3. Perused the Court.

4. This application for bail has been filed by applicant-Sudama Dixit, seeking his enlargement on bail in Case Crime No. 566 of 2023 under Section 306 I.P.C., Police Station-Kotwali Orai, District-Jalaun, during the pendency of trial.

5. Record shows that in respect of an incident, which is alleged to have occurred on 11.07.2023 a delayed F.I.R. dated 13.07.2023, was lodged by first informant-Smt. Pooja Patel (wife of the deceased) and was registered as Case Crime No. 566 of 2023 under Section 306 I.P.C., Police Station-Kotwali Orai, District-Jalaun. In the aforesaid F. I.R., two persons namely Dileep Tiwari and Sudama Dixit (applicant herein) have been nominated as named accused.

6. The genesis of the F.I.R. is to the effect that on account of conduct of the named accused, who used to harass the husband of first informant, the husband of first informant ultimately

committed suicide.

7. Learned senior counsel for applicant submits that though the applicant is a named accused yet he is liable to be enlarged on bail. Attention of the Court was then invited to the suicide note recovered by the Investigating Officer, copy of which is on record at page 58 of the paper book. On the basis of aforesaid document, it is thus urged by learned senior counsel that the appellant had not caused any fear or anxiety to the deceased. Moreover, the name of the applicant is not mentioned in the said document..

8. At the very outset, the learned senior counsel for applicant submits that co-accused Dileep Tiwari has already been granted anticipatory bail by this Court vide order dated 15.09.2023 passed in Criminal Misc Anticipatory. Bail Application No. 10404 of 2023 (Dilip Tiwari Vs. State of U.P. and another). For ready reference, the order dated 15.09.2023 is reproduced hereinin-under:

"1. Heard Ms. Gunjan Yadav holding brief for Shri S. Sengar, learned counsel for the applicant, Shri Vijay Singh Rathore, learned counsel for the informant as well as the learned A.G.A. for the State and perused the record.

2. This application has been moved on behalf of the applicant - Dilip Tiwari seeking anticipatory bail in Case Crime No. 0566 of 2023 under Section 306 IPC, Police Station Kotwali Orai, District- Jalaun.

3. The prosecution story, as unfolded in the F.I.R., is that the husband of the deceased, who was working as Godown Incharge of Gas Company, made a complaint against the present applicant and co-accused Sudama Dixit regarding some illegal activities committed by them and due to this animosity a false charge of theft was levelled against him by the present applicant and co-accused Sudama Dixit and being depressed with the same, he committed suicide on 10.7.2023 in the Bharat Gas Godown. F.I.R. was lodged by the informant / wife of the deceased on 13.7.2023 and investigation started, which is still going on.

4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against him are false. The investigation of the case is going on. It is further submitted that the F.I.R. was lodged after two days of the incident and there is no plausible explanation of this delay in the F.I.R. itself. It is also submitted that no original suicide note has been collected by

the Investigating Officer of the case during the investigation and even the informant / wife of the deceased herself could not provide it to the Investigating Officer. It is further submitted that no ingredient to establish the offence under Section 306 IPC is found in the present case. The so-called suicide letter which is in the form of the letter written by the deceased to the District Magistrate and Superintendent of Police, Jalaun has not been collected in original by the Investigating Officer in the investigation nor the original copy has been provided by the informant to the I.O.. It is also submitted that the alleged suicide note is a concocted piece of evidence. The applicant is cooperating with the investigation. He has no criminal history to his credit.

5. Per contra, learned A.G.A. and learned counsel for the informant opposed the prayer for anticipatory bail. It is vehemently submitted that on account of harassment and provocation caused by the applicant and the co-accused the deceased has committed suicide.

6. From the perusal of the record prima facie, the essential ingredients to establish a case under Section 306 IPC appear to be missing. The mens rea on the part of the accused has to be established by the prosecution and there must be atleast an indication that there was any intention on the part of the accused to abet the commission of suicide to the deceased and that is why the necessary element of abatement is conspicuously missing from the allegations levelled in the FIR, which is undoubtedly an essential ingredient to establish the offence under Section 306 I.P.C.

7. In Gurcharan Singh v. State of Punjab, (2017) 1 SCC 433 the Hon'ble Apex Court held that the basic ingredients of Section 306 IPC are suicidal death and abetment thereof. To constitute abetment, intention and involvement of accused to aid or instigate commission of suicide is imperative. Any severance or absence of any of these constituents would militate against said indictment. Remoteness of culpable acts or omissions rooted in intention of accused to actualise the suicide would fall short of offence of abetment essential to attract Section 306 IPC. Contiguity, continuity, culpability and complicity of indictable acts or omission are concomitant indices of abetment. Section 306 IPC thus criminalises sustained incitement for suicide.

8. In M. Arjunan v. State, (2019) 3 SCC 315 the Hon'ble Apex Court held that insulting deceased by using abusive language will not, by itself, constitute abetment of suicide. There should be evidence capable of suggesting that accused intended by such act(s) to instigate deceased to commit suicide. Unless ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC.

9. In Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1, the Hon'ble Apex Court has held that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the

offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

10. Hence, considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till filing of police report under Section 173(2) CrPC before the Competent Court.

11. The application is allowed accordingly.

12. In the event of arrest of the applicant, he shall be released on anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(ii) The applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

13. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

14. It is made clear that the observations made in this order are meant only to decide the anticipatory bail application and the trial court while deciding the case on merits will not be influenced with the same.

Order Date :- 15.9.2023 "

9. On the above premise, the learned counsel for applicant contends that the case of present applicant is on better footing than than that of co-accused Dilip Tiwari. He also contends that there is no such distinguishing feature on the basis of which case of present applicant can be so distinguished from the aforesaid bailed out co-accused so as to deny him bail. On the above premise, the learned senior counsel for applicant contends that in view of above

and for the facts and reasons recorded in the order dated 15.09.2023 of co-accused Dilip Tiwari applicant is also liable to be enlarged on bail on the ground of parity. Even otherwise, offence under Section 306 I.P.C. is subject to trial evidence. He further submits that an offence under Section 306 I.P.C. has to be examined on a joint reading of the provisions contained in 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 applicant in the commission of the crime in question. Moreover, no such circumstance has emerged on the record on the basis of which it can be conclusively concluded that the deceased committed suicide on account of an immediate act of applicant. To buttress his submission, he has relied upon the following judgement of Supreme Court:

(i). Sarvesh Vs. State of U.P. 2018 ADJ Online 0163.

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

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

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

(v). Kashibai and othara Vs. State of Karnataka, 2023, SCC OnLine SC 575.

10. Applicant has criminal history of three cases which has been duly explained in paragraphs 34, 35 and 36 of the paper-book. Appellant has been acquitted of the charge under Section 376 I.P.C. inasmuch as a final report was submitted which has also been accepted. The other more cases are of trivial in nature and do not grievous or heinous offence. It is thus urged that prima-facie rigours of the law laid down by Apex Court in **Neeru Yadav Vs. State of U.P. (2014) 16 SCC 508**, are not attracted Applicant is in

custody since 26.09.2023. As such, he has undergone almost a half month of incarceration. He therefore contends 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.

11. Per contra, the learned A.G.A. for State has opposed the prayer for bail. He submits that since the applicant is a named accused, therefore, applicant does 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.

12. Having heard the learned senior counsel for applicant, 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 applicant, coupled with the fact that the learned A.G.A. could not point out from the record any such circumstance necessitating the custodial arrest of applicant during the pendency of trial, the judgements of this Court and Apex court as noted above, the submissions urged by the learned counsel for applicant in support of present bail application, the period of incarceration undergone and also the fact that co-accused Dilip Tiwari has already been enlarged on anticipatory bail, but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

13. Accordingly, present application for bail is **allowed**.

14. Let the applicant-**Sudama Dixit** involved in aforesaid case crime number be released on bail 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) Applicant will not tamper with prosecution evidence.

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

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

15. 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 applicant and send him to prison

Order Date :- 13.10.2023

YK