

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45655 of 2023

Applicant :- Kalyan Ahirwar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Pandey, Satya Prakash Rathor

Counsel for Opposite Party :- G.A., Chandra Prakash Tiwari

Hon'ble Rajeev Misra, J.

1. Heard Mr. Satya Prakash Rathor, the learned counsel for applicant, the learned A.G.A. for State and Mr. Chandra Prakash Tiwari, the learned counsel representing first informant

2. Perused the Court.

3. This application for bail has been filed by applicant-Kalyan Ahirwar seeking his enlargement on bail in Case Crime No. 161 of 2023 under Section 306 I.P.C., Police Station-Ajnar, District-Mahoba, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 20.08.2023 (wrongly transcribed in the F.I.R. as 26.08.2023), a delayed F.I.R. dated 26.08.2023, was lodged by first informant-Achchhelal (father of the deceased) and was registered as Case Crime No. 161 of 2023 under Section 306 I.P.C., Police Station-Ajnar, District- Mahoba. In the aforesaid F. I.R., applicant Kalyan Ahirwar has been nominated as solitary named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that on 20.08.2023, named accused Kalyan Ahirwar i.e. applicant herein came at the house of the first informant and thereafter beat his son namely Keshav. Subsequently feeling

shame by above, son of first informant namely Keshav is alleged to have committed suicide.

6. It is apposite to mention here that after the occurrence dated 20.08.2023, the information regarding aforesaid occurrence at the concerned police station was given by complainant i.e. father of the deceased. The information so given by first informant was recorded in general diary of the concerned police station vide G.D. entry no. 36. From the perusal of the same, it is apparent that no person was nominated for committing any crime nor it was alleged therein that the deceased committed suicide on account of any act of other person. Subsequent to above, inquest (Panchnama) of the body of deceased was conducted on 20.06.2023. The first informant who is also witness of inquest (panch witness) did not nominat the present applicant for being responsible for the death of the deceased. 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 specified as hangiing. Subsequent to above, the post-mortem of the body of deceased was conducted on 21.08.2023. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was said to be asphyxia as a result of ante-mortem hanging. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:

i. A ligature mar of length 3.10 cm X 1 cm width...upper side of neck.... 5.0 cm just below Rt. ear 5.0 cm below Cheek, 3.0 cm below LP.... reddish brown....5.0 cm just below occipital region of....

ii. Abraded 5 x 1.5 cm above Rt. eye upto chest, mouth... clotted.

iii. Abrasion 2 x 2 cm... Lt... little finger.

7. After aforesaid proceedings had been undertaken, a delayed F.I.R. dated 26.08.2023 came to be lodged by first informant alleging therein that on account of conduct of named accused i.e. applicant herein, the son of the first informant committed suicide.

8. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of afore-mentioned case crime number in terms of Chapter XII Cr.P.C. He examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the F.I.R. 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 therefore opined to submit a charge-sheet. Accordingly, Investigating Officer submitted the charge sheet dated 10.10.2023 whereby the named accused i.e. applicant herein has have been charge sheeted under Section 306 I.P.C.

9. Learned counsel for applicant submits that though the applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. According to learned counsel for applicant immediately after the occurrence, the information regarding the same was given by the father of deceased i.e. first informant at the concerned police station. The same was recorded as G.D. Entry No. 36. From the perusal of the same, it is apparent that no allegation has been made against applicant for the crime in question. He therefore submits that departure has been made by first informant in the F.I.R. The departure so made remains unexplained upto this stage. It is next contended that there is delay of six days in lodging the F.I.R.. However, neither in the F.I.R. nor

in the statement of first informant as recorded under Section 161 Cr.P.. any explanation has come forward for explaining the delay in lodging in the F.I.R. Referring to Paragraph 8 of the judgement of Apex Court in **P. Rajagopal Vs. State of Tamilnadu, AIR 2019 SC 2866**, he contends that since the delay in lodging the F.I.R. has not been explained, therefore, the prosecution of applicant itself cannot be maintained. According to the learned counsel for applicant, the deceased was having telephonic conversation with the daughter of the applicant on account of which he made a complaint to the father of deceased, On the complaint, father of the deceased himself scolded and beat the deceased. It is on account of above circumstance that the deceased committed suicide. This submission urged by learned counsel for applicant is sought to be substantiated from the CDR report of the mobile phone of the daughter of applicant, copy of which is on record at page 59 of the paper book.

10. According to the learned counsel for applicants, an offence under Section 306 I.P.C. has to be considered on a conjoint reading of the provisions contained in Section 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 the 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. 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.

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 custody since 26.09.2023. As such, he has undergone more than two months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. However, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. 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.

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 applicant is a named as well as charge-sheeted accused, therefore, he does not deserve any indulgence by this Court. 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.

13. Having heard the learned 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 applicants, coupled with the fact that an offence under Section 306 I.P.C. has to be considered on a conjoint reading of the provisions contained in Sections 107 and 306 I.P.C, as per the material on record, upto this stage no abetment, instigation or conspiracy can be inferred against applicant in the commission of the crime in question, there is nothing on record to suggest that the deceased committed suicide on account of an immediate act of applicant, no instigation can be inferred from the conduct of applicant either, the judgements of this Court and Apex Court as noted above, an offence under Section 306 I.P.C is subject to trial evidence, charge sheet has been submitted against applicant, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalised, 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 applicant during the pendency of trial, the clean antecedents of 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 expressing any opinion on the merits of the case, applicants have made out a case for bail.

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

15. Let the applicant-**Kalyan Ahirwar** involved in aforesaid case crime number be released on bail on his 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) 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.

16. 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 :- 29.11.2023

YK