

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46076 of 2023

Applicant :- Shyamu Sharma @ Shyamu @ Kalla, Dinesh Sharma @ Dinesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashutosh Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ashutosh Gupta, the learned counsel for applicants, the learned A.G.A. for State and Ram Chandra Yadav, Advocate, who has put in appearance on behalf of first informant by filing his vakalatnama in Court today which is taken on record.

2. Perused the Court.

3. This application for bail has been filed by applicants-Shyamu Sharma @ Shyamu @ Kalla and Dinesh Sharma @ Dinesh seeking their enlargement on bail in Case Crime No. 0046 of 2023 under Section 306 I.P.C., Police Station-Basai Arela, District-Agra, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 31.07.2021, a prompt F.I.R. dated 31.07.2021, was lodged by first informant-Rahul Sharma (brother of the deceased) and was registered as Case Crime No. No. 0046 of 2023 under Section 306 I.P.C., Police Station-Basai Arela, District Agra,. In the aforesaid F. I.R., two persons namely Shyamu Sharma @ Shyamu @ Kalla and Dinesh (applicants herein) have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the

effect that on account of conduct of named accused, the deceased committed suicide by immolating herself.

6. After aforementioned FIR was lodged, the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C..

7. However, it is apposite to mention her that the deceased had died on 29.07.2021. The information regarding aforesaid occurrence at the concerned police station was given by the staff of the Hospital namely Priya Medical Hospital, Agra. On the said information, inquest (Panchnama) of the body of deceased was conducted. In the opinion of the witnesses of inquest(Panch witnesses), the cause of death of the deceased was said to be immolation (by using kerosene oil). However nature of death of the deceased could not be categorized. Subsequent to above, the post-mortem of the body of the deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was said to be shock as a result of ante-mortem burn injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:

i. Superficial to deep burn all over body except both lower legs, buttock, back side lower part.

ii. Line of redness + nt.

iii. Central line +nt. Rt. side of neck.

iv. Iv canneller + nt. Rt. ankle leg.

8. During course of investigation, Investigating Officer examined first informant and other witnesses namely Bhure Lal Sharma, Mahesh Chandra Sharma, Sunita, Rahul Sharma, Nandu Sharma,

Kishan Prasad, Raju Sharma, Suresh Chandra, Dr. Devendra Gupta, Dr. Suresh Chandra Chhabra, Dr. Vishal Upadhyay 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 both the 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 25.02.2022 whereby both the named accused have been charge sheeted under Section under Section 306 I.P.C.

9. Learned counsel for applicants submits that though the applicants are named as well as charge-sheeted accused yet they are liable to be enlarged on bail. The deceased is cousin sister of applicants (daughter of uncle of the applicants). By virtue of above no marital relationship can be established between the deceased and the applicants nor any physical relation can be maintained between the two by virtue of the prohibition contained in Hindu Marriage Act. According to the learned counsel for applicants, the 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 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. 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). 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. Even otherwise, applicants are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants are in custody since 25.09.2023. As such, they have undergone more than one month of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, therefore the entire evidence sought to be relied upon by the prosecution against applicants stands crystallised. However, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. He therefore contends that 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.

11. 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 applicants are named as well as charge-sheeted accused, therefore, applicants do not deserve any indulgence by this Court. According to learned counsel representing first informant, the deceased committed suicide on account of the conduct of the applicants which fact is clearly established from the statements of the witnesses examined under Section 161 Cr.P.C. It is thus urged that no sympathy be shown by

this Court in favour of applicants. However they could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

12. Having heard the learned counsel for applicants, 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 deceased is cousin sister of applicants (daughter of uncle of the applicants), by virtue of above no marital relationship could be established between the deceased and the applicants nor any physical relation can be maintained between the two by virtue of the prohibition contained in Hindu Marriage Act, the 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, 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 applicants, an offence under Section 306 I.P.C is subject to trial evidence, charge sheet has been submitted against applicants, therefore the entire evidence sought to be relied upon by the prosecution against applicants stands crystalised, yet inspite 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 applicants during the pendency of trial, the judgement of apex court as noted above, the clean antecedents of applicants, the period of incarceration undergone, therefore irrespective of the objections raised by 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.

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

14. Let the applicant- **Shyamu Sharma @ Shyamu @ Kalla and Dinesh Sharma @ Dinesh** involved in aforesaid case crime number be released on bail on their 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) Applicants will not tamper with prosecution evidence.

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

(iv) Applicants 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 applicants and send them to prison

Order Date :- 1.11.2023

YK