

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47083 of 2023

Applicant :- Shakib

Opposite Party :- State Of U.P. Through Its Principal Secretary
(Home)Lucknow

Counsel for Applicant :- Atul Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. It has been argued by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that the F.I.R. dated 20.04.2023 was lodged by the complainant under Section 302 I.P.C. in unknown alleging therein that on 14.04.2023 her husband had given an application before the police station wherein it was stated by him that his daughter aged about 24 years committed suicide by hanging herself, thereafter, her postmortem was conducted on the basis of which it came into her knowledge that her daughter was murdered. Learned counsel for the applicant further submits that the alleged occurrence took place on 14.04.2023 at about 6:30 p.m. whereas the F.I.R. of the said incident was lodged on 20.04.2023 at about 12:30 p.m. without plausible explanation of delay. Learned counsel for the applicant further submits that the Investigating Officer recorded the statements of first informant and other witnesses, namely, Ramkumar, Anup Singh and Mayaram, but none of the witnesses have said nothing about the applicant. Learned counsel for the applicant further submits that the Investigating Officer has also recorded the statement of husband of the first informant who is father of the deceased, but he has nothing said about the applicant. Learned counsel for the applicant further submits that one witness, namely, Smt. Madhu, who is the sister-in-law of the father of the deceased, in her statement recorded under Section 161 Cr.P.C. has stated that there was some affair of the deceased with the applicant. Learned counsel for the applicant further submits that one other witness, namely, Annu Tomar in his statement recorded under Section 161 Cr.P.C. has stated that he is fiancée of the deceased, before committing suicide the deceased called him through whatsapp video by which he had seen the deceased live committing suicide, the applicant had got some obscene videos and photographs and he used to blackmail her as told by the

deceased herself earlier. Learned counsel for the applicant further submits that the father of deceased and the first informant in their second statements recorded before the police had stated that there was some affairs of the deceased with the applicant. Learned counsel for the applicant further submits in inquest proceedings no injury was found on the person of the deceased, thereafter, postmortem of the deceased was conducted and ten injuries were found on the person of the deceased and cause of death was found to be asphyxia due to strangulation. Learned counsel for the applicant further submits that the doctor who conducted postmortem of the deceased had stated that cause of death of the deceased was strangulation. Learned counsel for the applicant further submits that there is no independent or eye witness of the incident, the applicant had not instigated the deceased to commit suicide, there are several contradictions in the statements of complainant and witnesses, the applicant has falsely been implicated in the case only on the basis of suspicion, the only evidence against the applicant is his confessional statement given before the police which is not admissible. Learned counsel for the applicant further submits that it appears that it is a case of honour killing and applicant has falsely been implicated in the case. He thus submits that no offence against the applicant is made. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 25.08.2023, having no criminal history.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant-**Shakib**, involved in Case Crime No. 46 of 2023, under Section 306 I.P.C., Police Station Babri, District Shamli, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The 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) 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.

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

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

6. 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 in accordance with law.

7. The bail application is **allowed**.

Order Date :- 6.11.2023
Mustaqeem.