

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47896 of 2023

Applicant :- Shyam Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Srivastava, Gaurav Srivastav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Gaurav Srivastav, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant-Shyam Singh seeking his enlargement on bail in Case Crime No.402 of 2023, under Section 306 IPC, police station North, district Firozabad, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 02.06.2023, a prompt first information report dated 02.06.2023 was lodged by first informant, namely, Arvind Kumar (husband of the deceased) and was registered as Case Crime No.0402 of 2023, under Section 306 IPC, police Station North, district Firozabad. In the aforesaid FIR, six persons, namely, Smt. Sanjo Devi; Shyam Singh (applicant herein); Anuj Kumar; Satyaveer; Manoj Kumar (HDFC) and Ram Lakhan have been nominated as named accused.

At the very outset, the learned counsel for applicant contends that co-accused Anuj has already been enlarged on bail by this Court vide order dated 08.11.2023 passed in Criminal Misc. Bail Application No.47881 of 2023 (Anuj Vs. State of U.P.). For ready reference, the same is reproduced herein-under :-

"1. वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र, आवेदक अनुज की ओर से मु०अ०स० 402/2023, अन्तर्गत धारा 306 भा०दं०वि०, थाना नार्थ, जिला फिरोजाबाद में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

2. आवेदक के विद्वान अधिवक्ता, एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

3. आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक को इस प्रकरण में गलत

एवं फर्जी ढंग से झूठा फंसाया गया है , उसने कथित अपराध कारित नहीं किया है , बयान एच.डी.एफ सी माइक्रो फाइनेन्स लोन डिपार्टमेन्ट मैनेजर ने कथन किया सर हमारे बैंक कर्मी को बेवजह ही फंसाया जा रहा है। उसकी कोई गलती नहीं है और न ही उसके द्वारा बेबी देवी से ऋण की किश्त प्राप्त करने हेतु दबाव बनाया गया है। ये सब मृतिका बेबी देवी के पति अरविन्द द्वारा बैंक से आर्थिक लाभ लेने हेतु किया गया है। प्रश्न यदि किसी समूह को कोई मेम्बर अपनी किश्त नहीं चुकाता है तो आप क्या करते हैं , या अपनी किश्त प्राप्त करने हेतु क्या करते हैं, या अपनी किश्त प्राप्त करने हेतु क्या प्रक्रिया अपनाते हैं। उत्तर सर, हम केवल समूह के मुखिया व अन्य सदस्यों आग्रह करते हैं कि वह समय से किश्त चुकाए, इसके अलावा हम कोई प्रक्रिया नहीं अपनाते । प्रश्न क्या किश्त चुकाने के लिए कोई स्थान तय होता है। उत्तर नहीं सर समूह की कोई भी महिला अन्य महिलाओं से किश्त का पैसा इकट्ठा कर बैंक आकर हर महीने 20 तारीख को जमा कर देती , परन्तु यदि कोई मेम्बर अपनी किश्त नहीं देती है तो ऐसी स्थिति में समूह की अन्य महिलाएं अपनी इच्छा से धनराशि जमा कर उक्त मेम्बर की किश्त को पूरा कर देती है।

4. उक्त बयान गवाह के अवलोकन से यह स्पष्ट होता है कि तथाकथित घटना में आवेदक की कोई विशिष्ट भूमिका नहीं है न ही मृतिका ने आवेदक पर कोई प्रत्यक्ष आरोप लगाया है। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 18.07.2023 से कारागार में निरुद्ध है इसलिए आवेदक को जमानत पर छोड़ दिया जाय

5. विद्वान अपर शासकीय अधिवक्ता ने आवेदक के विद्वान अधिवक्ता के तर्कों का प्रबल विरोध करते हुए तर्क प्रस्तुत किया कि आवेदक द्वारा कारित अपराध संज्ञेय एवं गंभीर प्रकृति का है, इसलिए आवेदक को जमानत पर न छोड़ा जाये।

6. आवेदक के विद्वान अधिवक्ता के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध सारवान तथ्यों एवं परिस्थितियों का समग्र रूप से अवलोकन करने के बाद , सबूतों की प्रकृति और किसी भी ठोस विरोधात्मक सामग्री की अनुपस्थिति एवं उपलब्ध सामग्री से छेड़छाड़ की संभावना न होने के तथ्य को देखते हुए मेरी राय में आवेदक को जमानत पर मुक्त करने का उपयुक्त आधार है।

7. अतः वाद के गुण दोष पर बिना कोई टिप्पणी किए हुए आवेदक को उपरोक्त वर्णित अपराध में संबंधित न्यायालय की सन्तुष्टि पर व्यक्तिगत बंध-पत्र एवं अधिक धनराशि के दो स्थानीय प्रतिभू प्रस्तुत करने पर निम्नलिखित शर्तों के साथ जमानत पर छोड़ दिया जाय।

1. आवेदक विवेचना या परीक्षण के दौरान अभियोजन साक्ष्यों के साथ छेड़छाड़ नहीं करेगा।

2. आवेदक अभियोजन साक्षियों व पीड़िता / शिकायतकर्ता को डरायेगा/धमकायेगा नहीं।
3. आवेदक न्यायालय के आदेशों का पालन करेगा , वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होगा तथा परीक्षण में ईमानदारी से सहयोग करेगा।
4. आवेदक जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा और किसी भी अपराधिक गतिविधि में लिप्त नहीं होगा न कोई अपराधिक कृत्य करेगा।
5. आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देगा न ही उनसे कोई वायदा करेगा , जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े

उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में , परीक्षण न्यायालय आवेदक की जमानत नियमानुसार रद्द करने को स्वतंत्र है।"

On the above premise, it is contended by the learned counsel for applicant that the case of present applicant is similar and identical to that of aforementioned named/charge-sheeted co-accused Anuj. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforesaid named/charge-sheeted but bailed out co-accused so as to deny him bail. On the basis of above, he contends that in view of above and for the facts and reasons recorded in the bail order of aforesaid named/charge-sheeted but bailed out co-accused, the applicant is also liable to be enlarged on bail on the ground of parity.

It is next contended by the learned counsel for the applicant that the allegations made in the first information report are wholly false and concocted. The loan amount given by HDFC Bank must have been credited in the bank account of the lessee/borrower i.e. wife of the deceased. In view of above, the allegations made in the FIR that applicant misappropriated the loan amount, inasmuch as, the said amount was not received by the deceased is clearly unsustainable. He further contends that though the applicant is a named/charge-sheeted accused yet he is liable to be enlarged on bail. The present case is a case of suicidal death and therefore covered under Section 306 IPC. An offence under Section 306 IPC is to be examined on a conjoint reading of Sections 107 and 306 IPC. Upto this stage, there is no such material on the basis of which instigation, conspiracy or abetment can be inferred against applicant. Moreover, there

is nothing on record which may go to show that the deceased committed suicide on account of an immediate act of applicant nor any instigation can be inferred against the applicant from his conduct. An offence under Section 306 IPC read with Section 107 IPC is subject to trial evidence. To buttress his submissions, he has referred to the following judgements :- **Sarvesh Vs. State of U.P. 2018 ADJ Online 0163** and that of the Supreme Court in **Gurcharan Singh Vs. State of Punjab 2020 (10) SCC 200; 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)**. On the basis of above, it is thus urged 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. He is in jail since 26.06.2023. As such, he has undergone more than five months of incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicant therefore, 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 on record on the basis of which it can be said that custodial arrest of applicant is absolutely necessary 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. has opposed the prayer for bail. He submits that since applicant is a named/charge-sheeted accused inasmuch as the charge-sheet has been submitted against applicant on 18.08.2023 therefore, he 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.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of accused, accusation made and coupled with the fact that the allegations made in the FIR prima facie do not inspire confidence for want of necessary details, even otherwise as per the averments made in the FIR it cannot be said that applicant has abetted, instigated or conspired in the commission of crime in question, none of the ingredients of Section 107 IPC are satisfied against applicant up to this stage, there is nothing on record to indicate abetment,

instigation or conspiracy against applicant or the deceased committed suicide on account of an immediate act of applicant, more over, an offence under Section 306 IPC read with Section 107 IPC is subject to trial evidence, the clean antecedents of applicant, the period of incarceration undergone, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicant, 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. could not point out any such circumstance from record necessitating custodial arrest of applicant during the pendency of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal and another Vs. State of Maharashtra and another, 2023 Livelaw SC 373 (Paragraph 5)**, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but, without making any comment on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Shyam Singh**, 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 :- 7.12.2023.

Rks.