

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48252 of 2023

Applicant :- Rinku

Opposite Party :- State of U.P.

Counsel for Applicant :- Santosh Kr. Singh Paliwal

Counsel for Opposite Party :- G.A., Shyam Kumar Verma, Virendra Kumar

Hon'ble Rajeev Misra, J.

Heard Mr. Santosh Kr. Singh Paliwal, the learned counsel for applicant, the learned A.G.A. for State and Mr. Virendra Kumar, the learned counsel for first informant.

Perused the record.

This application for bail has been filed applicant Rinku seeking his enlargement on bail in Case Crime No. 197 of 2023, under sections 306 IPC and Police Station- Atrauliya, District Azamgarh during the pendency of trial.

At the very outset, the learned counsel for applicant submits that co-accused Rajendra Giri and Sunita, have already been enlarged on bail vide order dated 22.9.2023, passed in Criminal Misc. Bail Application No. 38456 of 2023 (Rajendra Giri and Another Vs. State of U.P). For ready reference the same is reproduced herein under:

"1. Heard Mr. Santosh Kr. Singh Paliwal, the learned counsel for applicants, the learned A.G.A. for State and Mr. Shyam Kumar Verma Advocate holding brief of Mr. Virendra Kumar, the learned counsel representing first informant.

2. Learned counsel for first informant submits that he has filed a short counter affidavit in the registry but the same is not on record. Therefore, photocopy of the same has been placed before Court by the learned counsel for first informant. The same is taken on record. Rejoinder affidavit filed by learned counsel for applicants in Court today is also taken on record.

3. Perused the Court.

4. This application for bail has been filed by applicants-Rajendra Giri and Sunita seeking their enlargement on bail in Case Crime No. 197 of 2023 under Section 306 I.P.C., Police Station-Atrauliya District-Azamgarh, during the pendency of trial.

5. Record shows that in respect of an incident, which is alleged to have occurred on 10.07.2023 a delayed F.I.R. dated 12.07.2023, was lodged by first informant-Anita Devi (mother of the deceased) and was registered as Case Crime No. 197 of 2023 under Section 306 I.P.C., Police Station-Atrauliya District-Azamgarh. In the aforesaid F. I.R., four persons namely Rajendra, Ranku, Pintu and Sunita (applicant herein) have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused have caused death of the deceased in pursuit of their demand of additional dowry. The F.I.R. further records that as the additional demand of dowry was not fulfilled, physical and mental cruelty was regularly committed upon the prosecutrix upon which she committed suicide.

7. It is apposite to mentioned here that occurrence giving rise to present criminal proceeding occurred on 10.07.2023. After the aforesaid incident occurred,, information regarding the same was given at the concerned police station by Rinku, the husband of the deceased. On the basis of said information, inquest (Panchnama) of the body of deceased was conducted on 10.07.2023. In the opinion of the witnesses of inquest(Panch witnesses), the nature of death of the deceased was categorised as homicidal and the cause of death of deceased was opined as hanging. Subsequent to above, the post-mortem of the body of the deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased opined that cause of death of deceased is asphyxia as a result of ante mortem hanging. However, the Autopsy Surgeon did not find any other external or internal ante mortem injury on the body of the deceased except for the ligature mark. The same is described as under:

:1. Ligature mark 18 cm out on around the neck 6 cm below from right ear lobule and 3 cm below from right side ear lobule 16 cm gaping from back of neck ligature mark oblique below chin above thyroid groove brownish and parchment like on cut subcuten tissue had while glistening."

8. After aforesaid proceedings had been conducted, a delayed F.I.R. dated 12.07.2023 came to be registered, which has already been referred to above.

9. After completion of investigation of aforementioned case crime number, Investigating Officer on the basis of above, the statements of witnesses examined under Section 161 Cr.P.C. and other material collected by him, ultimately submitted the charge sheet dated 27.07.2023 against applicants and other named accused.

10. 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. Applicant-1 is the father-in-law of deceased. Applicant-2 is the mother-in-law of deceased. Referring to the provisions contained in proviso to Section 437 Cr.P.C., learned counsel for applicants submits that since applicant-2, Sunita is a lady therefore she is liable to be enlarged on bail. Marriage of son of applicants namely Rinku was solemnized with deceased 11 years ago. It is then contended that an offence under Section 306 I.P.C. is to be considered on a joint reading of the provisions contained in 107 and 306 I.P.C. Moreover, an offence under Section 306 I.P.C. is subject to trial evidence. With reference to the material on record, he submits that upto this stage there is no material on record on the basis of which abetment, instigation or conspiracy could 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/ There is nothing on infer instigation against applicants by their conduct either. To buttress his submission, he has relied upon the following judgements:

(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 othera Vs. State of Karnataka, 2023, SCC OnLine SC 575.

11. Applicants have criminal history of one case each. Referring to the Three Judges Bench judgment of Supreme Court in Brijmani Devi Vs. Pappu Kumar and Another, (2022) 4 SCC 497, he submits that an accused cannot be denied bail simply on the basis of criminal history. It is thus urged that even though applicants have criminal history of one case yet he is liable to be enlarged on bail. Applicants are in jail since 13.7.2023. As such, they have 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, 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 applicant are enlarged on bail, they 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 applicants are named as well as charge-sheet accused, therefore they do not deserve any indulgence by this Court. With reference to the material on record, the learned counsel for first informant submits that applicant initially committed quarrel with the deceased on account of which she committed suicide. On the above premise, he submits that cause of death of deceased is squarely attributable to the conduct of the applicants. As such, no sympathy be shown by this Court in favour of applicants.

13. When confronted with above, the learned counsel for applicants submits that the said conduct of the present applicants cannot amount to abatement nor instigation can be inferred against applicants on the basis of same.

14. Having heard the learned counsel for applicants, the learned A.G.A. for State, the learned counsel for the first informant, 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 applicants are the father-in-law and mother-in-law of the deceased, applicant-2 being a lady is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., upto this stage no such material has emerged on record on the basis of which it can be conclusively concluded that applicants have abetted, instigated or conspired in the commission of the crime in question, there is no such material on record to show that the deceased committed suicide on account of an immediate act of applicants, moreover, instigation cannot be inferred against applicants on account of their conduct, the judgements of this Court and Apex Court referred to above, the police report in terms of Section 173 (2) Cr.P.C. has already been submitted therefore the entire evidence sought to be relied upon by the prosecution against applicants stand crystallised, yet 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 the applicants, the explained criminal antecedents of applicants, 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.

15. Accordingly, present application for bail is allowed.

16. Let the applicants- Rajendra Giri and Sunita involved in aforesaid case crime number be released on bail on their 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) 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.

17. 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 "

On the aforesaid premise, learned counsel for applicant contends that case of present applicant is similar and identical to that of aforesaid bailed out co-accused. There is no such distinguishing feature on the basis of which case of present applicant can be so distinguished from aforesaid bailed out co-accused so as to deny bail to present applicant. It is thus contended that in view of above and for the facts and reasons recorded in the order dated 22.9.2023, present applicant is also liable to be enlarged on bail on the ground of parity.

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 jail since 13.7.2023. As such, he has undergone four months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. However, upto this stage, no such, circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, 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 in support of the present application for bail, 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, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact similarly situate and circumstanced co-accused Rajendra Giri has already been enlarged on bail, learned A.G.A. and the learned counsel for first informant could not point out any such distinguishing feature in the case of present applicant so as to distinguish her case from bailed out co-accused and deny bail to present applicant, the clean antecedents of applicant, period of incarceration undergone, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized, yet inspite of above, the learned A.G.A. as well as 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, therefore irrespective of the objeciton raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail but without making any comment on the merits of the case, applicant has made out a case for bail.

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

Let the applicant **Rinku** be released on bail in the aforesaid case crime number on 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) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER 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/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(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 THE HIM/HER 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/her 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 :- 14.12.2023

Arshad