

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48506 of 2023

Applicant :- Nitin Agarwal

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Goyal

Counsel for Opposite Party :- G.A., Sanjay Singh

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Ashish Goyal, learned counsel for the applicant, Sri Sanjay Singh, learned counsel for the first informant and Sri Ajay Singh, learned AGA-I for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Nitin Agarwal, seeking enlargement on bail during trial in connection with Case Crime No. 118 of 2020, under Section 302 I.P.C., registered at Police Station Jagdishpura, District Agra.

4. The FIR of the matter was lodged on 05.03.2020 under Section 306 IPC by Shiv Ganesh Singh against Smt. Preeti and Nitin Agarwal the present applicant. Subsequent to rejection of bail by the concerned trial court, the applicant applied for bail before this Court through Crl. Misc. Bail Application No. 23700 of 2020 (Nitin Vs. State of U.P.) which was granted vide order dated 13.10.2020. The said order reads as under:-

"Heard Sri Sushil Shukla, learned counsel for the applicant. Sri Sanjay Singh, learned counsel for informant and learned A.G.A. and perused the record.

By means of this application, the applicant Nitin, who is involved in Case Crime No. 118 of 2020, under Sections 306 I.P.C., P.S. Jagdishpura, District Agra, is seeking enlargement on bail.

It is contended by learned counsel for applicant that applicant is innocent. He has been falsely implicated in this very case crime number. It is also contended that the son of informant namely, Pawan Rana, has committed suicide on 27.1.2020 and no postmortem was conducted. His body was found hanging by fan. FIR was lodged on 5.3.2020, in which it is stated that the son of informant committed suicide and after a month his grand-daughter informed that there were illicit relationship between the wife of the deceased and applicant. It is next contended that in the statement of Ms. Gauri (9 years) recorded under Section 161 of Cr.P.C., there was nothing against the applicant. Subsequently, in the statement recorded

under Section 164 of Cr.P.C., a theory was developed to the effect that the applicant cause head injury with the help of 'danda' to the deceased. It is also contended that there is no evidence with regard to the instigation of the deceased or no directed evidence against the applicant. Applicant is of no criminal antecedent and is languishing in jail 19.3.2020. There is no likelihood of fleeing from course of justice or tampering with evidence. Hence, bail, during trial, has been prayed for.

Learned A.G.A. and learned counsel for the informant vehemently opposed the prayer for bail.

Considering the rival submissions, nature of accusation, severity of punishment in case of conviction and nature of supporting evidence, reasonable apprehension of tampering with the witness, prima facie case, without expressing any opinion on merit of the case, this bail application is allowed.

Let the applicant Nitin, involved in above mentioned case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of court concerned, subject to following conditions:

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
4. 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 of the Indian Penal Code;
5. In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 of the Indian Penal Code.
6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail."

5. The investigation had prior to grant of bail concluded and a charge sheet dated 14.05.2020 under Section 306 IPC was submitted against the applicant and co-accused Preeti. The matter was subsequently sent for further investigation and then a charge sheet dated 17.09.2020 was filed under Section 302 IPC against the said two persons. The said two charge sheets are annexure S.A.-1 to the supplementary affidavit dated 03.11.2023.

6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the applicant has been granted bail by this Court under Section 306 IPC after considering the statement of the girl recorded under

Section 161 Cr.P.C. and 164 Cr.P.C. It is argued that the filing of the second charge sheet dated 17.09.2020 under Section 302 IPC was without collection of any further and new evidence in the matter, the same was filed merely on the basis of the same material which was collected during investigation earlier on the basis of which the first charge sheet dated 14.05.2020 was filed under Section 306 IPC. It is argued that merely change of section in the charge sheet could not in any manner have any effect in the matter since the opinion of the Investigating Agency earlier was stated in the first charge sheet. It is argued that the trial court had taken cognizance on the first charge sheet filed under Section 306 IPC vide order dated 09.07.2020 after which on the second charge sheet filed under Section 302 IPC also cognizance has been taken vide order dated 21.10.2020. It is further argued that co-accused Smt. Preeti Rani has been granted bail by a co-ordinate Bench of this Court vide order dated 02.01.2023 passed in Crl. Misc. Bail Application No. 31758 of 2022 (Smt. Preeti Rani Vs. State of U.P.), copy of the order has been produced before the Court which is taken on record. He further argued that the applicant has no criminal history as stated in para 26 of the affidavit and is in jail since 29.09.2023.

7. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that the applicant is involved in the present case as he is named in the FIR and also in the statement of a minor girl Km. Gauri Rana. Although learned counsels did not dispute the fact that after filing of the first charge sheet and the second charge sheet there was no fresh and new material collected by the investigating agency.

8. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant was earlier granted bail by this Court in the present case crime number under Section 306 IPC. Charge sheet under Section 306 IPC was submitted against the applicant and co-accused Preeti Rani on which the trial court took cognizance. Subsequently the matter was referred for further investigation and a supplementary charge sheet/second charge sheet under Section 302 IPC was submitted on which the trial court has taken cognizance. No fresh and new material in the investigation could be brought before the Court or pointed out for any change in circumstance. Co-accused Smt. Preeti Rani has been granted bail.

9. Looking to 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, this Court

is of the view that the applicant may be enlarged on bail.

10. Let the applicant **Nitin Agarwal**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties (**one of the sureties of the applicant will be his family member**) 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 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.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

11. 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 and send the applicant to prison.

12. The bail application is ***allowed***.

Order Date :- 22.11.2023

M. ARIF

(Samit Gopal, J.)