

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48986 of 2023

Applicant :- Dinesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ankit Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Ms. Sonakshi Arora, Advocate, holding brief of Mr. Ankit Srivastava, the learned counsel for applicant, the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-**Dinesh Kumar** seeking his enlargement on bail in Case Crime No. 488 of 2023, under Sections 306, 506 IPC, Police Station-Modinagar, District-Ghaziabad during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 29.08.2023 a delayed FIR dated 05.09.2023 was lodged by first informant Anil and was registered as Case Crime No. 488 of 2023, under Sections 306, 506 IPC, Police Station-Modinagar, District- Rural (Commissionate Ghaziabad) In the aforesaid F.I.R., applicant Dinesh Kumar has been nominated as solitary named accused.

5. Learned counsel for applicant contends that though applicant is a named and charge sheet accused inasmuch as the charge sheet has been submitted against applicant on 05.10.2023, yet applicant is liable to be enlarged on bail. With reference to the record, she submits that though dead body of the deceased was recovered, neither the inquest nor the post mortem of the body of deceased was got conducted. As such, the cause of death of the deceased could not be ascertained. Learned A.G.A. has not contradicted the aforesaid submissions urged by the learned counsel for applicant.

6. It is then contended that an offence under Section 306 I.P.C. has to be considered on a conjoint reading of the provisions contained in Sections 107 and 306 IPC. Moreover, an offence under Section

306 I.P.C. is subject to trial evidence. However, upto this stage, it cannot be definitely concluded that applicant has either 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 applicant. Moreover, no instigation can be inferred from the conduct of the applicant either. To buttress his submission, he has relied upon the following judgments:-

(i). Sarvesh Vs. State of U.P. 2018 ADJ Online 0163,

(ii). Gurcharan Singh Vs. State of Punjab (2020) 10 SCC 200.

(iii). Kanchan Sharma Vs. State of U.P. and Another 2021 SCC OnLine SC 737,

(iv). Mirza Iqbal alias Golu and Another Vs. State of U.P. and Another 2021 SCC OnLine SC 1251,

(v) Mariano Anto Bruno and Another Vs. Inspector of Police 2022 SCC OnLine SC 1387,

(vi) Kashibai and Others Vs. State of Karnataka, 2023 SCC OnLine SC 575.

7. Learned counsel for applicant has then invited the attention of the court to the F.I.R. and on basis thereof, he contends that though there is a recital contained in the F.I.R. that modesty of the deceased was dislodged by the applicant but there is no material on record to corroborate the same, either by way of medical evidence or oral evidence. The complicity of applicant in the crime in question is however sought to be established on the basis of suicide note of the deceased, copy of which is on record at page 41 of the paper book. However, though, Investigating Officer has collected the electronic material in respect of the description made in the suicide note and further obtained the requisite certificate under Section 65-B of the Evidence Act but since applicant has not been charge sheeted under Section 67-A of the I.T. Act. therefore, no credence can be attached to the said document to infer the guilty of the applicant. Consequently, applicant is liable to be enlarged on bail.

8. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 19.09.2022. As such, he has undergone more than two months of incarceration. 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 applicant stands crystallized. 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 cooperate with the trial.

9. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that the complicity of applicant in the crime in question stands clearly established as per the suicide note of the deceased and the recital contained in the suicide note is corroborated by other evidence i.e. the electronic material collected by the Investigating Officer, as per the description occurring in the suicide note for which, the requisite certificate under Section 65-B of the Evidence Act has also been adduced. In view of above, the said evidence is legal evidence and can be adduced during the course of trial. Prima facie, there is nothing upto this stage to infer the innocence of applicant. Consequently, applicant does not deserve any sympathy by this Court.

10. When confronted with above, the learned counsel for applicant could not overcome the same.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of accused, gravity and nature of offence and accusation made coupled with the fact that the objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

12. In view of above, the bail application fails and is liable to be rejected.

13. It is, accordingly **rejected**.

Order Date :- 8.12.2023

Imtiyaz