

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 678 of 2023

Applicant :- Jyodhya Prasad Alias Ayodhya Prasad

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Lko.

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Manoj Kumar Singh, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
2. This bail application has been moved by the accused/applicant- **Jyodhya Prasad alias Ayodhya Prasad** for grant of bail, in Case Crime No. 163 of 2022, under Section 306 IPC, Police Station Gilaula, District Shrawasti, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
4. It is further submitted that the FIR of this case has been lodged by the father of the deceased on 28.9.2022 stating therein that the marriage of the deceased was solemnized with the applicant about 10 years before lodging of the FIR and during this period, they were blessed with two children and on the fateful day, the deceased had gone to market with the applicant. However, after their return, a scuffle/'marpeet' took place between them and the deceased jumped into a pond whereby she died and her dead body was retrieved from the pond on 28.9.2022 at about 8.00 am.
5. Highlighting the above facts, it is vehemently submitted that to attract Section 306 IPC, there has to be a direct nexus between any act or omission of an accused person with the commission of suicide by the deceased and the abetment or the act or omission must be of such a nature whereby the accused is intentionally aiding or facilitating the another person to end his life and this important ingredient is evidently lacking in the instant case.

6. Elaborating further, it is submitted that though some injuries have been found on the person of the deceased, which are very simple in nature and even if the same may be attributed to the applicant, it may only attract minor penal provisions and in absence of any instigation to force another person to commit suicide, Section 306 of the IPC could not be invoked against the applicant, more so, when there is no allegation of demand of dowry or committing cruelty in lieu thereof.

7. While drawing the attention of this Court towards the post mortem report of the deceased, wherein the cause of death has been ascertained as asphyxia due to drowning, it is submitted that the case of the prosecution is silent on this point as to what time the deceased has committed suicide.

8. It is also submitted that the investigation of this case has not been done with utmost care as the statement of the two important witnesses namely, the children of the deceased and the applicant, have not been recorded by the investigating officer. The applicant is in jail in this case since 29.9.2022 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

9. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the death of the deceased appears to have taken place due to drowning and her dead body has been retrieved from a pond situated in the village. On the fateful day, the deceased is said to have gone to market with the applicant. They had returned together. The scuffle appears to have taken place between them and it is stated that soon thereafter, the deceased had jumped into the pond. The defence of the applicant appears to be that a normal scuffle or fight may always not be termed as abetment and only those acts which have been defined under Section 107 of the IPC, may only be deemed sufficient to attract Section 306 IPC and every fight occurring between husband and wife may not be termed as sufficient abetment in order to invoke Section 306 IPC. Be that as it may, the fine conflicting points with regard to ascertain the ingredients of a particular offence may better be left for the trial court to evaluate it at an appropriate stage. Thus, while dealing with the personal liberty of the applicant who is also having a presumption of innocence and who was married to the deceased 10 years back and was also blessed with two children and not

having criminal history, these factors appear to be having sufficient force on the basis of which, the facility of bail may be extended to the applicant. The applicant is in jail in this case since 29.9.2022. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

11. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

12. Let the applicant- **Jyodhya Prasad alias Ayodhya Prasad** involved in the aforesaid case be released on bail on furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

14. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

15. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 19.12.2023
Shravan