

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2563 of 2023

Applicant :- Brijesh Kumar Kashyap

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

Counsel for Applicant :- Ajeet Kumar Singh, Gulam Mustafa, Vimlesh Kumar Kashyap

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Gulam Mustafa, 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- **Brijesh Kumar Kashyap** for grant of bail, in Case Crime No. 742 of 2022, under Section 306 I.P.C., Police Station Atrauli, District Hardoi, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the father of the deceased against the applicant and other co-accused person alleging therein that the deceased aged about 15 years had gone missing from her house since 17.12.2022 and her dead body could only be found hanging with the branch of a 'mango tree' in an orchard, information of which, has been received by him at about 4:00 pm. on 18.12.2022.

4. Highlighting the above facts, it is vehemently submitted that apart from the statements of the family members of the deceased, who were annoyed and were inimical towards the applicant and co-accused, there is no evidence or material collected by the investigating officer.

5. It is further submitted to constitute an offence under Section 306 I.P.C., the 'abetment' must be of the nature and magnitude, as defined under Section 107 of the Indian Penal Code and even if the case, as has been investigated by the investigating officer is taken on its face, it would be revealed that the basis of imputation against the applicant is based on the call details record collected by the investigating officer on the basis of which, an opinion appears to have been formed by the

investigating officer that the applicant and co-accused Umesh were frequently talking to the deceased and being humiliated by the same, the deceased has committed suicide.

6. It is further submitted that perusal of the call details record enclosed with the counter affidavit filed by the State would reveal that the last call has been made by the deceased herself on 17.12.2022 to a mobile phone bearing no. 8429170344, which is neither of the applicant nor of co-accused Umesh. It is also highlighted that it was the deceased herself, who had made the calls to the co-accused Umesh or to the applicant and, thus, there is no question of extending any abetment and the F.I.R. has been lodged only on the basis of suspicion and assumptions.

7. It is also submitted that in fact the family members of the deceased wanted to solemnize her marriage against her wishes with some other person and it appears that annoyed by the same she has taken extreme step of suicide. Applicant is languishing in jail in this case since 19.12.2022 and he is not having any criminal history and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that a young girl has committed suicide on the basis of 'abetment' given by the applicant and co-accused Umesh and, therefore, he is not entitled to be released on bail.

9. Perusal of the record, in the background of the submissions made by learned counsel for the parties, would reveal that informant of this case is the father of the deceased. Allegation of intimidating the deceased for making sexual relations has been levelled and has also shown as the cause for commission of the suicide. The call details record has been collected by the investigating officer prima facie reveals that the applicant has neither called nor received any call from the deceased since 15.12.2022 onwards. It is also submitted with considerable force that to attract an offence under Section 306 I.P.C., there has to be a direct nexus between any act or omission committed by the applicant with the commission of suicide, which is lacking in this case.

10. The finer points of contradictions or to say allegations and counter allegations could only be decided by the trial Court after providing an opportunity to lead evidence to the parties. However, having regard to all the facts and circumstances of the case in totality, I am of the considered view that applicant has made out a case for bail, moreover, when he is not having any criminal antecedents. The bail application is thus **allowed**.

11. Let the accused/applicant- **Brijesh Kumar Kashyap** involved in above-mentioned case, be released on bail on his 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.

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

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

14. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 6.11.2023

Praveen