

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4029 of 2023

Applicant :- Priyanshu Mishra

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

Counsel for Applicant :- Ashutosh Bajpai, Bhanu Dutt Dwivedi, Monika Dwivedi

Counsel for Opposite Party :- G.A., Piyush Kumar Giri, Santosh Kumar Sharma, Santosh Shukla

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Bhanu Dutt Dwivedi, learned counsel for the accused-applicant, learned counsel appearing for the complainant/informant 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- **Priyanshu Mishra** for grant of bail, in Case Crime No. 347 of 2022, under Sections 364, 302 and 201 I.P.C., Police Station Kotwali Nagar, District Bahraich, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The name of the applicant has been shown in the first information report only on account of suspicion and there is no material or evidence in support of the same.
4. It is vehemently submitted that during the course of investigation the police has developed a theory that applicant and co-accused Sadhna Bajpai were having affair and the deceased Jai Prakash has also developed inclination towards Sadhna, which was not liked by the applicant and on the fateful day in pursuance of a conspiracy hatched by the applicant and co-accused Sadhna the deceased was called by Sadhna to her home on the pretext that it was birthday of Sadhna and when he arrived at her house, he was given 'sleeping pills' and thereafter strangled by both and her body was thrown in the river by the applicant.
5. It is further submitted that the story, as cooked up by the investigating officer is highly improbable, concocted and could not be believed. The dead body of the deceased has not been recovered and, therefore, it could not be presumed that he has

been done to death by strangulation and the recovery of a 'bed sheet' as well as 'shoes' and 'shocks' of the deceased may not have any consequence for want of identification.

6. It is further submitted that only on account of the statements of various witnesses, it is projected that it was the applicant who had purchased the 'sleeping pills', which were given to the deceased but it has not been mentioned as to from which shop the pills have been purchased.

7. It is also submitted that C.C.T.V. footage is also shown to have been obtained wherein a person driving a motorcycle is seen along with some baggage on the rear seat and also returning after sometime. However, the applicant could not be identified as the same person and, thus, whole story cooked up by the prosecution is under the realm of suspicion and hypothesis. The real fact is that the applicant is not having any ill-will towards the deceased and all the story, as cooked up by the prosecution is based on suspicion and apprehension.

8. It is further submitted that the recovery of a 'bed sheet' as well as shoes and shocks of the deceased on the pointing of the applicant could also not be believed for want of independent public witnesses. Applicant is languishing in jail in this case since 05.11.2022 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.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, he is not entitled to be released on bail.

10. Learned counsel representing the complainant/informant vehemently opposes the prayer of bail of the applicant and submits that applicant and co-accused Sadhna were having affair and co-accused Sadhna also having an affair with the deceased, which was not liked by the applicant and he (applicant) had pressurized the co-accused Sadhna to hatch a conspiracy to eliminate the deceased and in furtherance of the said conspiracy, the deceased was called by Sadhna in her house on the pretext of celebrating her birthday and thereafter she was given sleeping pills and when he became intoxicated, they both strangled him.

11. It is further submitted that there is ample evidence with regard to the purchase of sleeping pills by the applicant and also of C.D.R. details as well as the location of the applicant and co-

accused Sadhna and deceased, which has been found at one and same place, moreover, the C.C.T.V. footage is also collected by the investigating officer wherein the applicant is shown going towards '*Chehlari Ghat Marg*' with some baggage tied on the pillion seat and he is also seen returning after sometime and, thus, after causing the death of the deceased the dead body has been disposed of by the applicant.

12. It is also submitted that there are many witnesses in front of whom the co-accused Sadhna had confessed while they had gone to jail to meet him and, therefore, having regard to the evidence collected by the investigating officer against the applicant, he is not entitled to be released on bail.

13. Perusal of the record in the background of the submissions advanced by learned counsel for the parties would reveal that in the F.I.R. lodged by the informant, only an apprehension is shown that the deceased might have been killed by applicant with the help of co-accused Sadhna. During the course of investigation, it is revealed that applicant was having ill-will towards the deceased, as the deceased had developed intimacy with co-accused Sadhna and he persuaded Sadhna to eliminate deceased and in execution of this conspiracy co-accused Sadhna called deceased to her house on the pretext of celebrating her birthday gave him 'sleeping pills' in the tea purchased by the applicant and when he became unconscious, he was done to death by strangulation and applicant took the motorcycle of his brother-in-law namely Anil Tiwari and with the help of co-accused Sadhna put the dead-body in a bag covered by a bed-sheet and dispose of the same in the river and concealed bed-sheet under a bridge, the bed-sheet is shown to have been recovered on the pointing of the applicant.

14. The investigating officer has recorded the statement of witnesses Shivpal and Putti @ Kalloo, who stated that the deceased was dropped by them near Lakhanpur Village and he also told them that he is going to celebrate the birthday of Sadhna at her house. The accused-applicant is shown to have been arrested and confessed his guilt and as stated earlier a bed-sheet allegedly used in commission of the crime was recovered on his pointing. Co-accused Sadhna was also arrested and confessed her guilt and on her pointing, shocks and shoes of the deceased were recovered from an open field.

15. Attempts were made by the investigating officer by deploying diverse to recover the dead-body of the deceased, which ultimately could not be recovered.

16. Statement of Moni Bajpai (sister of applicant) was also

recorded, who stated that she had gone to prison to meet applicant and he has confessed his guilt in front of her. Additional statement of the applicant was also recorded wherein he stated to have purchased sleeping pills from a chemist. Statement of one Kavita Devi (sister of co-accused Sadhna) was also recorded, where she stated that she had gone to meet Sadhna in jail and she has also confessed her guilt. The investigating officer has also collected the C.D.R. details of the mobile phones of co-accused Sadhna and location of her and applicant were found together at same place. Statement of one Moni Bajpai (sister of applicant) was again recorded wherein she stated that applicant had taken motorcycle of her husband in the intervening night of 21/22.10.2022 and had returned at 4:30 am. C.C.T.V. footage of a C.C.T.V. camera installed at Bhagwanpur Crossing is also procured, wherein a motorcycle rider is seen taking a 'gathri' towards 'Chehlari Ghat' at 2:53:45 hours and was also seen returning at 3:16:58 hours and the 'gathri' is not seen on the motorcycle, however, the rider and motorcycle could not be identified.

17. It is also evident that during those days, there was 'Bhagwat Katha' going on in the village and the fateful day was the last day of the same and it was expected that the family members of Sadhna would go to hear the final day of 'Bhagwat Katha'. There are other witnesses also who have stated about the organization of 'Bhagwat Katha' in the village and also that fateful day was the last day of it.

18. The law with regard to appreciation of circumstantial evidence has been clearly enunciated in the case of **Hanumant v. State of Madhya Pradesh MANU/SC/0037/1952** : wherein Hon'ble Supreme Court held as follows:

"10/12 ...It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the Accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the Accused and it must be such as to show that within all human probability the act must have been done by the Accused"

Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR, 1984 SC 1622** laid down that

the following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established;

"1. the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.

2. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

3. the circumstances should be of a conclusive nature and tendency;

4. they should exclude every possible hypothesis except the one to be proved, and

5. there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

19. Thus, having regard to all the facts and circumstances of the case, I do not find any good ground on the basis of which the facility of bail may be extended to the applicant.

20. In result, the bail application moved on behalf of the applicant- **Priyanshu Mishra** is, hereby, **rejected**.

21. The trial Court is, however, directed to conclude the trial **within six months** without granting unnecessary adjournments to the parties and if the trial is not concluded or all the witnesses of fact are not examined within six months from today, whichever is earlier, the applicant would be entitled to renew his prayer of bail again before this Court.

22. The S.P./S.S.P., Bahraich would be personally responsible to produce the witnesses before the trial Court on each and every date of such listing.

23. A copy of this order be immediately sent to the trial Court through the Sessions Judge concerned as well as to the S.P./S.S.P., Bahraich, for strict compliance.

24. 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.

25. Case diary of the case be immediately returned to learned
A.G.A.

Order Date :- 8.12.2023
Praveen