

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7664 of 2023

Applicant :- Ali Hasan

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

Counsel for Applicant :- Surya Prakash Singh, Abdul Shadab Khan

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard 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- **Ali Hasan** for grant of bail, in Case Crime No. 51 of 2023, under Section 306 I.P.C., Police Station Rampur Mathura, District Sitapur, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. In the first information report, which has been lodged on 09.03.2023 at Police Station Rampur Mathura, District Sitapur, it is apprehended that applicant and other co-accused persons has caused the death of the deceased. The postmortem report of the deceased would reveal that the cause of death of the deceased has been ascertained as 'asphyxia', due to 'antemortem hanging' and, therefore, the investigation was altered into Section 306 I.P.C. and the charge sheet has already been submitted under Section 306 I.P.C.

4. It is vehemently submitted that during the course of investigation the brothers of the deceased, namely, Harishankar Tiwari, Arvind Tiwari and Govind Tiwari and some other witnesses are shown to have stated that the instant applicant was having ill-will and jealousy towards the deceased and at relevant point of time he has also made a phone call to the deceased and apprehended thereby the deceased has committed suicide.

5. It is also submitted that to constitute an offence under Section 306 I.P.C., the 'abetment', as defined under Section 107 I.P.C. must exist, which is lacking in this case. The allegations, which have been levelled against the applicant, may not amount to the abetment, as required to constitute an offence under Section 306 I.P.C. The applicant is languishing in jail in this case since

13.03.2023 and he is not having any criminal history. Charge sheet in this case has already been filed 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.

6. 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.

7. Having heard learned counsel for the parties and having perused the record, it is reflected that the cause of death of the deceased has been ascertained as 'asphyxia', as a result of 'antemortem hanging', as a 'ligature mark' has been found around his neck. Apart from the ligature mark, no injury, etc. has been found on the person of the deceased. During the course of investigation, the investigating officer appears to have recorded the statement of the relatives of the deceased, who have stated that the applicant before this Court was having an ill-will with the deceased had made a phone call on his mobile phone at relevant point of time. The Pen-Drive of the talk, which is allegedly recorded by the deceased is also mentioned in the case diary, however, the transcript of the same is not available. There cannot be any other view than the fact that to attract the offence under Section 306 I.P.C., the magnitude of the 'abetment' must be as defined under Section 107 of the Indian Penal Code. The defence of the applicant appears to be that even if the case of the prosecution is believed as it is, the 'abetment', as required to constitute an offence under Section 306 I.P.C. is patently lacking. Applicant is languishing in jail in this case since 13.03.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

8. 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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

9. Let the accused/applicant- **Ali Hasan** 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.

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

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

12. 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 :- 30.10.2023

Praveen