

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9513 of 2023

Applicant :- Mahesh Tiwari @ Nannan And 2 Others

Opposite Party :- The State Of U.P. Thru. Addl.Chief Secy., Deptt. Of Home, Lucknow

Counsel for Applicant :- Anoop Srivastava, Akhilesh Singh Chauhan, Ms. Tiwari Shivani Subhash, Satyendra Kumar Tiwari, Srees Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Mr. Satyendra Kumar Tiwari, learned counsel for the accused-applicants, learned A.G.A. for the State, and Mr. Srees Kumar Srivastava, learned counsel appearing for the complainant/informant and, perused the record.

2. This bail application has been moved by the accused/applicants- **Mahesh Tiwari alias Nannan and Ram Babu** for grant of bail in Case Crime No.092 of 2023, under Sections 323, 504, 506, 447 and 306 IPC lodged at Police Station Makhi, District Unnao, during trial.

3. Learned counsel for the accused-applicants, while pressing the bail application, submits that the applicants have been falsely implicated in this case on the basis of prior enmity and, they have not committed any offence, as claimed by the prosecution.

4. It is further submitted that the allegations against the applicants, as are surfaced from the dying-declaration of the deceased, are to tune that on the relevant day the deceased was humiliated and assaulted by the applicants and other accused persons and, feeling humiliated he had poured kerosene oil and put himself on fire whereby he had sustained grievous injuries and died of the same. Highlighting the statement of the deceased (when he was alive), it is vehemently submitted that to constitute an offence under Section 306 IPC, there has to be an abetment and the abetment must be of the magnitude as defined under Section 107 IPC and, even if the statement, which may be termed as dying-declaration, is believed, no abetment of the suicide, as defined under Section 107 IPC, is available in this case. It is further submitted that moreover even if the whole case of the prosecution is taken on its face, the

cooling period was available to the deceased and there was no occasion or opportunity for the deceased to have taken this extreme step.

5. Elaborating further, it is further submitted that each & every act or omission of an accused may not be termed as abetment unless the same is coming within the purview of Section 107 IPC. It is further submitted that identically placed co-accused, namely, Smt. Maya alias Rama Kanti has been granted bail by the coordinate Bench of this Court vide order dated 23.06.2023 passed in Criminal Misc. Bail Application No.7834 of 2023 and the dying-declaration has been recorded by the investigating officer in the shape of statement of the injured (deceased) under Section 161 CrPC, which is one of the weakest type of dying-declaration, as there was an opportunity/occasion for the doctor as well as any magistrate to have recorded the dying-declaration of the deceased. Reliance in this regard has been placed on the Constitutional Bench judgment of the Hon'ble Supreme Court reported in **MANU/SC/0707/2002: AIR 2002 SC 2973 (Laxman Vs. State of Maharashtra)**.

6. It is next submitted that applicants are languishing in jail in this case since 16.04.2023 and they are not having any previous criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail they may flee from the course of law or may otherwise misuse the liberty.

7. Learned A.G.A., however, opposes the prayer of bail of the applicants on the ground that it is on the basis of abetment provided by the applicants and other accused persons the deceased has committed suicide and, therefore, the applicants are not entitled to be released on bail.

8. Shri Srees Kumar Srivastava, learned counsel appearing for the complainant/informant, vehemently opposes the bail plea of the applicants by drawing attention of this Court towards the dying-declaration of the deceased. It is also the contention of learned counsel for the complainant/informant that the applicants could not be able to get parity of bail order passed in the case of co-accused, *Smt. Maya alias Rama Kanti* (supra) who has been granted the concession of bail on the ground of being an woman.

9. Perusal of record in the background of submissions of learned counsel for the parties would reveal that the deceased appears to have set himself on fire by pouring kerosene oil. The postmortem report of the deceased would sufficiently demonstrate superficial to deep burn injuries caused on his

person and cause of death has been shown as shock as a result of antemortem burn injuries. The dying-declaration of the deceased has been recorded by the investigating officer in the shape of statement under Section 161 CrPC, which is admissible under Section 32 of the Indian Evidence Act. The deceased had attributed the role of abusing and assaulting to all the accused persons and also being humiliated by the same, he has committed suicide. The postmortem report of the deceased has not shown any other injury on the body of the deceased except superficial to deep burn injuries. The defence of the applicants also appears to be that to constitute an offence under Section 306 IPC there has to be a direct nexus between the abetment given to the deceased by the accused and the abetment must be of the magnitude and nature as defined under Section 107 IPC which, according to learned counsel for the applicants, is lacking in this case. Identically placed co-accused, Smt. Maya alias Rama Kanti has already been granted bail and perusal of the bail order with regard to her would sufficiently demonstrate that a concession has not been granted by the coordinate Bench under Section 437 CrPC, rather the bail to her has been granted on merits. It is also highlighted by the learned counsel appearing for the informant/complainant that role of co-accused, Rajan alias Ramesh is different than the role of the applicants as he is a convict. This apprehension of the learned counsel for the informant/complainant may be taken care of at appropriate time and in appropriate proceedings. However, having regard to all the facts and circumstances of the case and also keeping in view the ground of parity, facility of bail may safely be extended to the applicants. The applicants are languishing in jail in this case since 16.04.2023 without any previous criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicants may be secured before the trial court by placing adequate conditions.

10. 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 applicants have made out a case for bail. The bail application is, thus, **allowed**.

11. Let the accused/applicants-**Mahesh Tiwari alias Nannan and Ram Babu**, involved in above-mentioned case, be released on bail on their furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicants shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the

investigation or trial.

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

(iii) The applicants 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 applicants 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 3.11.2023

MVS/-