

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10757 of 2023

Applicant :- Umesh

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

Counsel for Applicant :- Anil Kumar Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Anil Kumar Awasthi, 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- **Umesh** for grant of bail, in Case Crime No.304/2023, under Sections 306 I.P.C., Police Station-Hargaon, District- Sitapur, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that the first information report of this case has been lodged by the brother of the deceased, namely, Anuj Kumar by moving an application under Section 156 (3) Cr.P.C before the Magistrate wherein allegation of treating the deceased with cruelty has been alleged against the applicant and it is stated that on 11.08.2022 at about 08.00 AM, the deceased had been done to death.

5. Highlighting the above facts, it is vehemently submitted that the first information report has been lodged under the orders of the Magistrate passed under Section 156 (3) Cr.P.C. and the application under Section 156 (3) Cr.P.C. has been drafted by an advocate and the allegations therein have been aggravated under professional legal advise.

6. Elaborating further, it is submitted that prior to moving of an application under Section 156 (3) Cr.P.C., the informant himself had moved an information in writing before the Police Station-Hargaon, District- Sitapur, a reference of which has been given in the inquest report of the deceased and in that report , no

allegation as have been levelled in the application moved under Section 156 (3) Cr.P.C., were stated. It clearly means that the same has been carved out subsequently with the help of a legal professional.

7. It is also submitted that in the post mortem report, apart from a ligature mark around the neck of the deceased, no other injury has been noticed and the cause of death has been shown as asphyxia as a result of ante mortem hanging. The applicant is in jail in this case since 02.07.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant 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 the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that the deceased appears to have committed suicide after 11 long years of her marriage with the applicant and though, in the first information report, it is alleged that the deceased was being treated with cruelty by the applicant, who was a drunkard and used to assault the deceased occasionally. The Investigating Officer during the course of investigation has recorded the statement of the *Pradhan* of the village (wherein the deceased appears to have committed suicide), who has stated that on the relevant day, the festival of *Raksha Bandhan* had fallen and the deceased was insisting the applicant to take her to her maternal home on which an altercation occurred and the applicant asked her to die. The exact words stated by the witness Ratnesh Lal (*pradhan*) are to the effect:- "*Jao, kahin mar jao jakar; hmko apna munh nhin dikhana.*"

10. It is to be recalled that to attract an offence under Section 306 I.P.C., the abetment as required must be of the magnitude as provided under Section 107 of the Indian Penal Code and there has to be a direct nexus/ relation between any act or omission of the accused (which is being termed as 'abetment') with the act of commission of suicide. The altercation admittedly, as stated by an independent witness who is also the *pradhan* of the village, was going on between husband and wife and in the middle of which, the applicant stated to have asked her wife to go and die. The same is to be appreciated by the trial

Court at an appropriate time as to whether the same may amount to abetment as defined under Section 107 of the Indian Penal Code. However, having regard to the facts and circumstances of the case and keeping in view the period of detention, the applicant has already undergone as well as the fact that the deceased had committed suicide after 11 long years of her marriage, the case of bail is made out in favour of the applicant. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 02.07.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. Having regard to the overall facts and circumstances of the case and 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**.

12. Let the accused/applicant- **Umesh** 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.

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 by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 18.10.2023
Gurpreet Singh