

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10830 of 2023

Applicant :- Mo. Rafeek

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

Counsel for Applicant :- Anuj Dayal, Reshu Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Shri Anuj Dayal, learned counsel for the applicant, Shri Rajesh Kumar Singh, learned AGA-I for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.94 of 2023, under Sections 306, 406 IPC., Police Station Fardhan, District Kheri.

3. It has been submitted that FIR has been lodged by father of the deceased levelling allegation against father-in-law (applicant) to the extent that the applicant used to force the deceased to live in his house and Rs.70,000/- was advanced to the applicant and Rs.50,000/- was advanced to the brother of applicant. It has been mentioned in the FIR that money was not returned that is why the deceased committed suicide by hanging.

4. Learned counsel has invited attention of the court towards the statement of independent witness Sadhari Lal, Surendra Kumar and Ashma, who is wife of the deceased. He has submitted that in the statement of all the witnesses, it has been mentioned that the deceased was asked by the applicant to live in his house and money was not returned by him that is why he committed suicide out of frustration. Learned counsel has submitted that there is no active act on the part of applicant which can attributed to commit suicide by the deceased. He has submitted that the applicant has not compelled or created any situation due to which no option was left to the deceased to commit suicide.

5. Learned counsel has relied upon various judgments of the Supreme Court in the cases of *M. Arjunan vs. State* (2019) 3 SCC 315 ; *Kanchan Sharma vs. State of U.P.* (2021) 13 SCC 806 ; *Gurucharan Singh vs. State of Punjab* (2020) 10 SCC 200 ; *Rajesh vs. State of Haryana in Criminal Appeal No.93 of 2019*.

6. Learned counsel has submitted that after perusing the aforesaid judgments, it cannot be said that in the given facts, ingredients of Sections 306 and 107 IPC is meted out. He submitted that a bare perusal of the aforesaid

judgments coupled with the facts of the given case, there is no positive evidence which indicate that there is positive act done intentionally or aided by the applicant in commission of crime. There is no direct or any clinching evidence collected by the Investigating Officer which would indicate that the applicant committed suicide because of the act of the applicant. The applicant has no criminal history and is languishing in jail since 26.06.2023.

7. Shri Rajesh Kumar Singh, learned AGA-I appearing for the State has opposed the prayer for bail and submitted that the fact of the applicant is coming within the purview of Sections 306 and 107 IPC because he had not return the amount advanced by the deceased and also he was forced to live in the house of applicant therefore, out of frustration and instigation done by the applicant, the deceased committed suicide. Learned AGA further submitted that the statement of the witnesses are also supporting the prosecution case as such the applicant is not entitled to be released on bail. .

8. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking to the argument that there is no positive act or instigation done by the applicant to commit suicide, argument that there is no reason to believe that applicant was involved in any positive act of instigation, and relying upon various judgments of the Hon'ble Supreme Court mentioned above, I find it to be a fit case for grant of bail.

9. Let the applicant, **Mo. Rafeek** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

10. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 13.10.2023

Pks