

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12338 of 2023

Applicant :- Rizwana

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

Counsel for Applicant :- Bhupendra Singh Bisht, Nadeem Murtaza, Wali Nawaz Khan

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Learned AGA informs that he has procured complete instructions in the matter including upto date case diary and charge sheet in this case has also been submitted.
2. Heard Shri Wali Nawaz Khan, learned counsel for the accused/ applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Rizwana** for grant of bail, in Case Crime No. 37/2023, under Sections 302, 201 IPC, Police Station Dubagga, District Lucknow, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report of this case was lodged against the husband of the applicant, namely, Salman and the applicant was not named therein and the allegation which has been levelled in the First Information Report are to the tune that on 19.2.2023 at about 10.30 P.M. the deceased, namely, Furqan was taken by the named accused- Salman (husband of the applicant) with him and thereafter his (informant) son did not return and the dead body of the deceased was found lying near the house of the named accused- Salman in the next morning. It is also stated that the deceased was having illicit relationship with the wife of the named accused- Salman and in this regard a quarrel had taken place between them about eight months before lodging of the FIR and it is believed that his (informant) son has been done to death by the named accused person, namely, Salman. The informant in his statement recorded under Section 161 Cr.P.C. has also fortified the allegations levelled in the FIR. The

postmortem report of the deceased would reveal that the deceased was a young person of 28 years and his dead body has been described as average built and a ligature mark of 32 c.m. x 3 c.m. has been found around his neck and as per the doctor the death of the deceased has occurred due to ante-mortem strangulation, however the viscera has been preserved.

5. Highlighting the above facts, it is vehemently submitted that in the FIR as well as in the statement of the informant, specific allegations were levelled that the deceased was taken by named accused – Salman at the relevant point of time and thereafter in the morning, dead body of the deceased was found near his house, however, the Investigating Officer during the course of investigation has developed a new case, as it is evident from the confessional statement of the applicant recorded while she was in the custody of the police to the tune that the deceased was in one sided love with the applicant and was talking to her and also pressurizing her to make sexual relations as he had already established sexual relations earlier. On 19.2.2023 the husband of the applicant was not in home and the deceased attempted to make sexual relations with the applicant and in defending herself the applicant had strangled him with a part of a bed sheet and the deceased was highly intoxicated and could not resist and thereafter the applicant removed the bed sheet which was tying around the neck of the deceased and kept the same in her house and her husband was informed about the incident by her in the morning.

6. It is vehemently submitted that the story as cooked up by the Investigating Officer is highly improbable and could not be believed in the facts and circumstances of the case as the Investigating Officer has also collected the call details record of applicant and deceased, the description of which has been annexed as Annexure No.7 to the bail application and page no. 52 of the paper book in order to show that the deceased as well as the applicant were frequently talking with each other and on 19.2.2023 at 18.49 hours a long conversation had taken place between them and at 19.09 hours, the deceased had called the applicant many times. Thus, the Investigating Officer appears to be of the view that the deceased had come to the house of the prosecutrix after making a call to her which was also attended by her, in this scenario the story developed by the Investigating

Officer that the deceased attempted to outrage her modesty and also attempted to make sexual relations to which she was not ready could not be believed. As the admitted case of the prosecution appears to be that after having a long conversation the deceased had come to the house of the prosecutrix.

7. It is also submitted that the recovery of a part of bed sheet and knife may also not be of any significance as these are common household things and are found in every house and the recovery of the same may not impute any circumstance or evidence against the applicant. The confessional statement recorded while she was in the custody of police may also not be proved against her in view of the bar contained under Section 26 of the Indian Evidence Act. The applicant is a lady having three children of the age 9,6 and 4 years and is in jail in this case since 22.02.2023 (almost 10 months). Charge sheet has already been submitted and there is no criminal history against the applicant and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8. Learned A.G.A. on the other hand submits that the deceased on the relevant point of time had attempted to assault the prosecutrix sexually and she has strangled him with a part of the bed sheet which was recovered on her pointing and thus having regard to the materiel available against the applicant, she is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that the case of the prosecution is based on circumstantial evidence. The law with regard to circumstantial evidence is now well settled. All the incriminating circumstances, which should be of conclusive nature, must be proved and such proved circumstances must form a chain and such chain should be so strong enough, not to leave any room for any other person except the accused to enter in between and commit the offence. Coming to the factual matrix of this case, the FIR has been lodged by the father of the deceased stating clearly that the deceased had been taken by the husband of the applicant, namely, Salman in the night at about 10.30 P.M. and on the next day in the morning, the dead body of the deceased has been found near the house of Salman. The

circumstances which have been placed against the applicant are call details record pertaining to her conversation with the deceased taken place at the relevant point of time and the recovery of a portion of a bed sheet and knife. Admittedly the death of the deceased has occurred due to 'asphyxia' as a result of strangulation. The dead body has not been recovered from inside the house of the prosecutrix and for the reasons which could only be explained by the Investigating Officer, the husband of the applicant who had taken the deceased with him in the wee hours of the night has been given clean chit and has not been charge sheeted . The applicant is a lady having three children and is detained in prison in this case for the last 10 months and having regard to the pendency of the cases before the trial court, the trial is not going to conclude in near future, thus without discussing the circumstances, which are being placed against the applicant as the same may affect the course of trial, in the considered opinion of this Court, a case is made out in favour of the applicant for bail. The bail application is, thus, **allowed**.

10. Let the applicant- **Rizwan** involved in the aforesaid case be released on bail on her 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.

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

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

13. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 17.10.2023

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