

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12591 of 2023

Applicant :- Salman Ali

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

Counsel for Applicant :- Dileep Kumar Yadav

Counsel for Opposite Party :- G.A.,Rashmi Rajvanshi,Razia Khan,Shri Prakash

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Shri G.D. Bhatt, learned A.G.A. assisted by Shri Omkar nath Pandey, Brief Holder for the State and perused the record.
2. Learned counsel for the complainant is not present.
3. The applicant is involved in FIR/Case Crime No. 91 of 2023, under Section 306 IPC, Police Station Machhrhta, District Sitapur.
4. Learned counsel for the applicant has submitted that FIR of this case was lodged by the brother of the deceased with the allegation that the applicant had illicit relations with the wife of the deceased. The deceased was done to death by the applicant and co-accused Zakimun Nishan in the grove of Razzak. It is further submitted that as per postmortem report, there is no injury except ligature mark on around the neck above thyroid cartilage. The cause of death was found due to asphyxia as a result of hanging. The case was investigated by the Investigating Officer and charge sheet was filed under Section 306 IPC. The Investigating Officer came to the conclusion that the deceased committed suicide by hanging himself for the reason the applicant and co-accused had abetted the deceased to

commit suicide as there was illicit relations between the applicant and wife of the deceased. Therefore, sections 302 and 201 IPC were expunged. The applicant has no previous criminal history. He is in jail since 28.08.2023.

5. It is further submitted that there is no ingredient of Section 107 IPC in the present case because there is no direct or indirect evidence available against the applicant and there is no active act on the part of the applicant in commission of crime.

6. Learned A.G.A. has, however, opposed the prayer for bail and has submitted that the deceased committed suicide by hanging due to illicit relations between the applicant and wife of the deceased.

7. Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties and keeping in view the fact that there is no direct or clinching evidence available against the applicant that he abetted the deceased to commit suicide and without expressing any opinion on the merit of the case, I find it to be a fit case for granting bail.

8. Let applicant Salman Ali be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned subject to following conditions, which are being imposed in the interest of justice:-

(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. The applicant shall not tamper with the evidence.

(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.

Order Date :- 22.12.2023

Virendra