

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14053 of 2023

Applicant :- Poonam

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

Counsel for Applicant :- Manoj Kumar Singh

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 has already been submitted in this case.
2. Heard Shri Manoj Kumar Singh, 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- **Poonam** for grant of bail, in Case Crime No. 20 of 2023, under Section 306 IPC, Police Station Malhipur, District Shrawasti, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the name of the applicant has been dragged into this case only on account of suspicion as it was apprehended that the applicant was having illicit relationship with the husband of the deceased, namely, Bhola.
5. It is vehemently submitted that in the FIR which has been lodged by son of the deceased Rohit on 18.1.2023, it is alleged that on the same day at 10.00 A.M., on which the FIR has been lodged the deceased was assaulted by the applicant by using bricks and thereafter the deceased consumed '*Oleander seeds*', by which she died.
6. While drawing the attention of this Court towards the postmortem report of the deceased wherein no injury has been shown on the person of the deceased, it is vehemently submitted that the facts narrated in the FIR are belied by the postmortem report as no injury of any kind has been found on the person of the deceased at the time of postmortem examination.

7. It is also submitted that even if the case of the prosecution is taken on its face, it would reflect that the husband of the deceased was having illicit relationship with the applicant.
8. The attention of this Court has also been drawn in this regard on the statement of some eye witnesses recorded by the Investigating Officer, namely, Ramzan Ali, Daroga and Jitendra Kumar and it is submitted that even if this story of the prosecution is believed the applicant was a passive party and admittedly has not given any abetment as defined under Section 107 of the IPC and thus by any stretch of imagination, Section 306 IPC may not be attracted against the applicant.
9. It is also submitted that the applicant is in jail in this case since 21.09.2023 and she is not having any criminal history. Charge sheet in this case has already been filed 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.
10. Learned A.G.A. on the other hand submits that by the illicit relationship of the applicant with husband of the deceased, she had committed suicide by consuming some poisonous substance and having regard to the fact that the applicant was a party to illicit relationship, sufficient abetment has been given by her.
11. Having heard learned counsel for the parties and having perused the record, it is evident from the documents submitted by the parties that the name of the husband of the deceased is Bhola and the case of the prosecution appears to be that Bhola was having illicit relationship with the applicant and being humiliated/ aggrieved by the same, the deceased had committed suicide. In the First Information Report it is stated that on 18.1.2023 the applicant had assaulted the deceased by using bricks. Admittedly there is no injury found on the person of the deceased in the postmortem report and as the viscera was preserved, *oleander poison* has been found therein as is evident from the Forensic Science Laboratory Report, a copy of which has been placed on record as Annexure No.12 to the bail application. The defence of the applicant appears to be that even if the case of the prosecution is taken on its face, no abetment as defined under Section 107 of the IPC may be in favour as it was the husband of the deceased against whom an allegation has been levelled that he was having illicit relationship with the applicant.
12. Having regard to all the facts and circumstances of this case, the case of the applicant appears to be distinguishable

from the role of the husband of the deceased, namely, Bhola in commission of the crime.

13. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

14. Let the applicant- **Poonam** 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.

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

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

17. 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 :- 29.11.2023

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