

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14042 of 2023

**Applicant :-** Budhai

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

**Counsel for Applicant :-** Manoj Kumar Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh,J.**

1. Heard learned counsel for the applicant and Sri Mukesh Singh, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.234 of 2023 under sections 306, 323, 506 IPC, Police Station Gilaula District Shrawasti.

3. It has been submitted by learned counsel for the applicant that deceased committed suicide by hanging and his father had given information to the police on 24.09.2023 which is entered in G.D. No.15 and inquest was also conducted on same day in which the complainant is also witness. Thereafter in the evening of 24.09.2023, FIR has been lodged by the father of the deceased. In the FIR, he has mentioned that the applicant and other family members came to his house and the applicant met his daughter thereafter his son was beaten by him and the applicant had taken his daughter to his house. It has been further mentioned in the FIR that applicant told the deceased that he would go and die and due to that reason, deceased committed suicide in the night of 23/24.09.2023.

4. Learned counsel for the applicant has submitted that statement of Nanke, Jagat Ram, Raj Kumar and Raksha Ram has been recorded under section 161 Cr.P.C. on 26.09.2023 in which they have stated that on 22.09.2023 applicant and his family members had come to the house of the deceased and they had asked his daughter Kusum to go alongwith them. They have stated that relation between daughter of the applicant and deceased was not cordial that is why on the date of occurrence she had gone to the house of her father i.e. applicant. It has

been mentioned that applicant had slapped the deceased and told him that he always used to harass his daughter. Learned counsel for the applicant has submitted that from the statement of the independent witnesses and the version of the FIR, the ingredients of Section 107 IPC is not made out. The applicant came along with his family members and took his daughter due to that reason deceased was under depression and he committed suicide for which the applicant is not responsible. It has been submitted by learned counsel for the applicant that the applicant is not involved in the commission of crime in any manner and ingredients of abetment cannot be attributed against the applicant in the commission of crime. The applicant has no previous criminal history and there is no possibility of fleeing away from the judicial process or tampering with the witnesses and in case, the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 12.10.2023.

5. Learned A.G.A. has opposed the prayer for bail but could not dispute the aforesaid facts.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that no ingredients of section 107 IPC are made out and the argument that deceased committed suicide and the complainant himself informed the police that his son committed suicide but later on he lodged an FIR making allegation against the applicant to commit the crime, therefore, I am of the opinion that the applicant is entitled to be released on bail on the ground of parity.

7. Let the applicant, namely, **Budhai**, 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.

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 :- 29.11.2023**

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