**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14536 of 2023

**Applicant :-** Shivdutt Shukla @ Naan Shukla
**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko.
**Counsel for Applicant :-** Bharat Kumar Dixit
**Counsel for Opposite Party :-** G.A.

**Hon'ble Mohd. Faiz Alam Khan,J.**

1. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.

2. Heard 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- **Shivdutt Shukla @ Naan Shukla** for grant of bail, in Case Crime No.0436 of 2023, under Section 306 I.P.C., Police Station Unchahar, District Raebareli, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

5. It is further submitted that F.I.R. of this case has been lodged by father of the deceased on 05.09.2023 with the allegations that the deceased was having affair with a girl, who was related to the applicant, however, the applicant and father of the girl had made a complaint in the concerned police station, however, the same has resulted into a compromise executed in the police station and at that point of time, the applicant and one Bramhadutta had intimidated the deceased of dire consequences and on 01.09.2023 at about 04:30pm the deceased had gone to market and the applicant along with other two accused persons were seen taking the applicant on a motorcycle with them and in the intervening night at 02:00am. it was informed that dead body of the deceased is placed at C.H.C., Unchahar and it was apprehended that the deceased has been done to death by the applicant and other named accused persons.

6. While drawing attention of this Court towards the postmortem report of the deceased, it is vehemently submitted

on behalf of the applicant that the story as cooked up by the informant is highly improbable, concocted and could not be believed as the same is not finding any corroboration with the postmortem report and all the injuries, which have been found on the person of the deceased, may only be related with a train accident and it appears that he had committed suicide as he was in love with the niece of the applicant and their relationship was not being materialized.

7. It is further submitted that the evidence against the applicant is purely of circumstantial nature and the circumstances, which are being alleged against the applicant, are not of conclusive nature and apart from a whatsapp message allegedly sent by the deceased to his brother Mayank Pandey, there is no other concrete evidence/material, which may relate the applicant even remotely with any act or omission, which may be construed as an abetment as defined under Section 107 of the I.P.C. Elaborating further, it is submitted that even if the message, which has been allegedly sent by the deceased to his brother Mayank Pandey, is believed and taken as it is, it may not place any concrete material or evidence against the applicant as the theory of assault is not corroborated by medical evidence and there is nothing in this message, which may be termed as abetment allegedly given by the applicant.

8. It is further submitted that identically placed co-accused person of the alleged crime, namely, Jay Prakash Shukla @ J.P. Shukla has been granted anticipatory bail by the Coordinate Bench of this Court, vide order dated 04.12.2023 passed in Criminal Misc. Anticipatory Bail Application No.2751 of 2023.

9. It is next submitted that applicant is in jail in this case since 07.09.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that on account of physical assault given by the applicant and other accused persons, the deceased had committed suicide and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the deceased and the niece of the applicant are shown to be in a relationship and a compliant in this regard was made by the father of the girl in

the concerned police station, however, an agreement/compromise was entered between the two families and thereafter the instant F.I.R. has been lodged. Admittedly the informant of this case is not an eye witness of the incident and the F.I.R. has been lodged on the basis of apprehension. After investigation, offence of Section 306 I.P.C. has been inferred by the investigating officer. The defence of the applicant appears to be that the only evidence, which is available against the applicant, is the text message allegedly sent by the deceased to his brother Mayank Pandey and even if the same is taken on its face, it may not be construed as abetment or omission as defined under Section 107 I.P.C. There cannot be any other view that to constitute an offence under Section 306 I.P.C., there has to be a direct nexus between the alleged act or omission and commission of suicide by the deceased. Various submissions have been raised by learned counsel for the applicant in order to show that there was no direct nexus between any act or omission and commission of suicide by the deceased. It has been highlighted by the Coordinate Bench of this Court, while granting anticipatory bail to co-accused Jay Prakash Shukla @ J.P. Shukla that the allegation of assault are not finding corroboration with any medical evidence. Identically placed co-accused person of the alleged crime, namely, Jay Prakash Shukla @ J.P. Shukla has been granted anticipatory bail by the Coordinate Bench of this Court. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 07.09.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. Having regard to the overall facts and circumstances of the case and 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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

13. Let the accused/applicant- **Shivdutt Shukla @ Naan Shukla** involved in above-mentioned case, be released on bail on his 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.

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

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

16. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

**Order Date :-** 11.12.2023
Anupam S/-

Digitally signed by :-
ANUPAM SINGH PATEL
High Court of Judicature at Allahabad,
Lucknow Bench