

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14705 of 2023

Applicant :- Bhola

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Manoj Kumar Singh, learned counsel for the applicant, Shri Arun Kumar Verma, learned AGA for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.20 of 2023, under Section 306 I.P.C., Police Station Malhipur, District Shrawasti.

3. Learned counsel for the applicant submitted that FIR has been lodged by son of applicant in which he has levelled allegation against wife of Manohar and mentioned that she hit her mother with brick and thereafter his mother came back and she consumed Oleander due to which she died. Learned counsel further submitted that son who is complainant has not levelled any allegation against the applicant rather he has levelled allegation upon Poonam, wife of Manohar.

4. Learned counsel further submitted that the statements of witnesses namely, Ram Naresh, Rekha and Sangita were recorded under Section 161 Cr.P.C. on 23.02.2023, 28.2.2023 and 24.03.2023 and all of them have stated nothing adverse against the applicant. It has been further submitted that after seven months from the date of incident, statements of Ramjan Ali and Daroga have been recorded on 22.08.2023 and they have stated that altercation took place between deceased and co-accused Poonam on the date of occurrence and the applicant was present over there. They have further stated that co-accused Poonam had told the deceased that she was having relations with her husband and she would go along with him. Thereafter, deceased went to her house and consumed Oleander seeds and died.

5. Learned counsel further submitted that statements of Ram Naresh, Rekha and Sangita indicates that applicant was in Nepal at the relevant time. Learned counsel submitted that if the statement of Ram Naresh and Daroga is taken on face value there is no instigation on the part of the applicant and there is no ingredients of Section 107 Cr.P.C. further there is no direct or clinching evidence which shows that applicant was involved in the commission of

crime. It has been submitted that applicant is in jail since 21.09.2023 having no criminal antecedents to his credit.

6. Learned AGA opposed the prayer for bail and submitted that deceased committed suicide because of instigation done by applicant who had illicit relations with co-accused Poonam as such applicant is involved in the offence and his bail is liable to be rejected.

7. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and considering argument that deceased committed suicide ; argument that son of applicant lodged FIR did not assign role to the applicant; argument that there is no direct or clinching evidence ; argument that no adverse statement has been given by Ram Naresh, Rekha and Sangita ; argument that there is no ingredients of instigation found, I am of the view that it is a fit case for grant of bail.

8. Let the applicant, **Bhola**, 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.

10. 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 :- 14.12.2023

Pks