

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 934 of 2023

Applicant :- Shivam

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

Counsel for Applicant :- Purnendu Chakravarty

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

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

2. The present bail application has been filed by the applicant -Shivam with a prayer to enlarge him on bail in Case Crime No.125 of 2022 under Section 302, 201, 34 IPC, PS Jaidpur, district Barabanki.

3. It has been submitted by learned counsel for the applicant that complainant- wife of deceased lodged report mentioning therein that her husband had gone outside from the house on 19.4.2022 at 2.00 O' Clock in the night and the dead body of her husband was found at the bank of canal near village Patamau, PS, Jaidpur, district Barabanki. It is submitted that the complainant has been made accused later on on the basis of confessional statement. He has submitted that on the joint pointing out of accused, a blood stained screwdriver was recovered from Kunal Sharma, a blood stained paper cutter was recovered from pointing out of co-accused Shivam, and a blood stained brick was recovered from the pointing out of the complainant. It has further been submitted that applicant and other co-accused were arrested on 21.4.2022 and the recovery was also made on the same day. Later on, after two days i.e. on 23.4.2022 two witnesses have been examined under Section 161 Cr.P.C. i.e. Ashok Kumar and Deepak and they have stated that recovery of pillow and bed sheet were done on 23.4.2022 and thus, the recovery is highly doubtful, therefore, the prosecution story cannot be relied upon after such long span of time.

4. Learned counsel for the applicant has submitted that the prosecution has failed to obtain certificate under Section 65-B of the Indian Evidence Act for Whatsapp Chatting and thus, in absence of following the mandatory provision as we F.S.L report, the prosecution story is highly doubtful. In support of his submission learned counsel for the applicant has relied upon a decision of Hon'ble Supreme Court in the case of *Arjun Pandit Rao Khotkar Vs. Kailash Kushanrao Gorantyal and others; AIR 2020 SC 4908*. The relevant paragraph of the said judgment is quoted hereinbelow:-

"72. The reference is thus answered by stating that:

(a) *Anvar P.V. (supra)*, as clarified by us hereinabove, is the law declared by this Court on Section 65- B of the Evidence Act. The judgment in *Tomaso Bruno (supra)*, being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as *Shafhi Mohammad (supra)* and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

(b) The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in *Anvar P.V. (supra)* which reads as "...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act..." is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,..." With this clarification, the law stated in paragraph 24 of *Anvar P.V. (supra)* does not need to be revisited.

(c) The general directions issued in paragraph 62 (*supra*) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67 C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

(d) Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justice's Conference in April, 2016."

5. Learned counsel for the applicant has submitted that in absence of non adherence of provisions of Section 65- B of the Evidence Act and Section 79-A of the I.T. Act as well as after considering the facts of the present, it cannot be presumed that the applicant is involved in the present crime. The evidences which are collected by the police is not admissible in the eyes of law, therefore, the applicant is entitled to be enlarged on bail.

6. On the other hand learned A.G.A. opposed the bail prayer and submitted that CRIMINAL MISC. BAIL APPLICATION No. - 10253 of 2022 of the co-accused -Smt. Pinki Verma, who is complainant and wife of the deceased was rejected vide order dated 28.8.2023 on the basis of whatsapp chatting. The complicity of Smt. Pinki Verma was found in the commission of alleged crime, as it was found that she planned the murder of the deceased, as her daughter Prinsi was in love with the deceased. The order dated 28.8.2023 is quoted hereinbelow:-

"1. Heard learned counsel for the applicant, Sri Rajesh Kumar Singh learned A.G.A.-I for the State and perused record.

Supplementary affidavit filed today on behalf of the applicant, is taken on record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.125 of 2022 under Section 302, 201, 34 IPC, PS Jaidpur, district Barabanki.

3. Learned counsel for the applicant has submitted that the applicant is the complainant and wife of deceased who lodged report in which she has mentioned that her husband had gone outside from the house on 19.4.2022 at 2.00 O' Clock in the night. She has further stated in the FIR that the dead body of her husband was found at the bank of canal near village Patamau, PS, Jaidpur, district Barabanki. It is submitted that the applicant who is complainant, has been made accused on the basis of confessional statement. He has submitted that on the joint pointing out of accused, a blood stained screwdriver was recovered from Kunal Sharma, a blood stained paper cutter was recovered from pointing out of co-accused Shivam, and a blood stained brick was recovered from the pointing out of the applicant.

4. Learned counsel for the applicant has further submitted that on the confessional statement has no value and the applicant has been falsely implicated. He has submitted that the applicant is a lady, therefore, bail should be granted.

5. On the other hand, Sri Rajesh Kumar Singh, learned AGA -I has submitted that the deceased as received 11 injuries and many injuries indicate that they can be caused by brick. He has further submitted that co-accused

Shivam had love affair with the daughter of the applicant and he, applicant and the daughter of the applicant wanted to get rid of the deceased because there were no good relation with the applicant and deceased. He has further invited attention of the Court towards the WhatsApp chatting which took place between the co-accused Shivam and co-accused Prinsi. The relevant portion of WhatsApp chatting is quoted below:-

"... Toh dekh lena. Call karo ok mammy se kahenge wo, 5 minet. Thik ja rahe. Call karo, Or ha gate kholne ke bad call kareng jdi se shoes nikl kea a jana. Samajh lo jaha jab aaye the jaanu ko lock kiya tha wahi dethe ha 3000 nupye nikal lena, hai bye sab ko rum me pek kar di o, Ha thik hai, Ok mummy ja rahi kholne baki tum log sambhal lena ok, Bye Bye, ok kholo, Ok, Bas thoda wait, Ghar ke samane Agayw, Kholo, Kholo gi, Kholo, Nahi age, Aao ab aaram se om, Ok, baccee (illegible) nahi ji, Aao, Ok Chappal niche yaad se, Or awaj na ho, Khol diya hai gate, ab suno, aye, Jutte shappal job he...."

6. It has been submitted by the learned AGA that WhatsApp chatting is clinching evidence that shows that the deceased was done to death and the offence has taken place in the house of the applicant.

7. Considering over all facts and circumstances of the case, the argument that clinching evidence of WhatsApp chatting has been collected by the Investigating Officer, which indicates that the murder has taken place in the house of the applicant, it is not a fit case for bail.

8. Accordingly, the bail application is rejected. However, the Trial Court concerned is directed to expedite the trial within ten months from the date of receipt of a certified copy of this order. The Trial Court will not be influenced by the observations made by this Court."

7. Learned A.G.A. has submitted while granting bail to the co-accused -Kunal Sharma vide order dated 9.7.2024 in Criminal Misc. Bail Application No. 15177 of 2022, this Court was of the opinion that case of the applicant is distinguishable to the case of the co-accused Smt. Pinki Verma and Shivam, as no role has been assigned to the applicant in the Whatsapp chatting, as the Whatsapp chatting had taken place between co-accused- Prinsi and Shivam. He as further submitted that this Court had formed a view while rejecting the bail of Smt. Pinki Verma, therefore, it would not be feasible to take another view of the present applicant, who was involved in the planning of the murder of the deceased.

8. Considering overall the arguments and the fact that bail application of the co-accused- Smt. Pinki Verma has been rejected on the basis of the whatsapp chatting, the argument is that the applicant has hatched a plan for committing the murder of the deceased,

therefore, the case of the present applicant is also distinguishable to the case of co-accused -Kunal Sharma, who has been granted bail.
Thus, the present bail application is, accordingly, rejected.

(Brij Raj Singh, J.)

Order Date :- 12.9.2024
Anuj Singh