

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5200 of 2024

Applicant :- Buddh Prakash

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy., Deptt. Of Home, Lko.

Counsel for Applicant :- Ajay Sharma, Rajesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Shri Ajay Sharma, learned counsel for the applicant, Shri Vishwaas Saraswat, learned A.G.A. for the State.

2. As per the learned counsel for the applicant, the present applicant is in jail since 05.03.2024 in Case Crime No.140 of 2023, under Section 306 IPC, Police Station- Kotwali Nagar, District- Ayodhya.

3. Learned counsel for the applicant has submitted that the present applicant has been falsely implicated in the case as he has not committed any offence as alleged. Attention has been drawn towards the impugned FIR, which shows that for the alleged incident dated 08.03.2023 but the FIR has been lodged on 10.03.2023. If the story of the FIR is taken on its face value, it appears that the present applicant has been implicated only on the basis of suspicion.

4. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble Apex Court in **Re: Madan Mohan Singh Vs. State of Gujrat and Another reported in (2010) 8 SCC 628; Rajesh Vs. State of Haryana reported in (2020) 15 SCC 359; and Arnab Manoranjan Goswami Vs. State of Maharashtra and Others reported in (2021) 2 SCC 427**, by submitting that the basic ingredients of Section 306 IPC are

suicidal death and abetment thereof. To constitute abetment, intention and involvement of accused to aid or instigate commission of suicide is imperative. Any severance or absence of any of these constituents would militate against said indictment. For the convenience, Para 10 and 14 in **Re: Madan Mohan Singh (supra)** are being reproduced below:-

"10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

14. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work."

(emphasis supplied)

5. Para 9 in of the judgment of Hon'ble Apex Court in **Re: Rajesh (supra)** is being reproduced herein-below:-

"9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (See Amalendu Pal alias Jhantu v. State of West Bengal1)."

(emphasis supplied)

6. On the basis of aforesaid submissions, learned counsel for the

applicant has submitted that in the present case, there is no overt act on the part of the present applicant and unless and until there is any overt act or positive act on the part of the applicant/accused to instigate/abete to commit suicide, the ingredients of Section 306 IPC would not be attracted. Therefore, Shri Sharma has submitted that in the present applicant may not be implicated under Section 306 IPC.

7. Learned A.G.A. has, however, opposed the prayer for bail but he could not dispute the aforesaid submissions of learned counsel for the applicant.

8. Without entering into the merits of the case; considering the arguments of learned counsel for the parties; contents and allegations of F.I.R.; the fact that there is about two days' delay in lodging the FIR and such delay has not been explained; the applicant has been implicated in the case only on the basis of suspicion; no overt act has been assigned to the applicant abetting the deceased to commit suicide; the applicant has no prior criminal history of any kind whatsoever and undertaking of the applicant that he shall abide by all conditions of the bail order and cooperate in the trial court proceedings, I find it appropriate to release the present applicant on bail.

9. Accordingly, the bail application is **allowed**.

10. Let applicant- **Buddh Prakash** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the 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.

(v) The applicant shall not leave India without previous permission of the court.

[Rajesh Singh Chauhan,J.]

Order Date :- 14.5.2024
Mohd. Sharif