

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13216 of 2024

Applicant :- Lakhan Nishad

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

Counsel for Applicant :- Sandeep Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Sandeep Singh, learned counsel for the applicant, Sri Ram Ji, learned Additional Government Advocate for the State and Sri Surendra Singh, learned counsel, who has put in appearance on behalf of the complainant/ informant and filed Vakalatnama on her/ his behalf. The same is taken on record.

2. Learned counsel for the applicant has filed supplementary affidavit, today in the Court, the same is taken on record.

3. As per learned counsel for the applicant, the present applicant (Lakhan Nishad) is languishing in jail since 02.11.2024 in Case Crime No.335 of 2024, under Sections 108 of Bharatiya Nyaya Sanhita, 2023 (henceforth referred to as the "B.N.S."), Police Station-Huzurpur, District-Bahraich.

4. Learned counsel for the applicant has submitted that the present applicant has been falsely implicated in this case as he has not committed any offence as alleged in the prosecution story.

5. Attention has been drawn towards the impugned First Information Report (in short F.I.R.) wherein the allegation of murder has been levelled against seven accused persons including the present applicant, who is husband of the deceased. However, during the course of investigation, no material was found to suggest that the deceased was murdered. During the course of investigation, the factum emerged that the deceased committed suicide by consuming poison as the Forensic Science Laboratory report, which has been annexed as Annexure No.SA-1 with the supplementary affidavit, says that the deceased consumed Aluminium Phosphide. The statement of the complainant recorded under Section 180 B.N.S.S. wherein he has stated that the marriage of his daughter with the present applicant was solemnized in the year 2013, since then, she was living happily with her son-in-law. Though she was

having two daughters and there was no son, therefore, the in-laws of his daughter were having malice against her.

6. Learned counsel for the applicant has stated that without knowing the actual facts and circumstances false allegation of murder has been levelled, though it was a case of suicide. There is no overt/ positive act on the part of the present applicant to instigate / abet the deceased to commit suicide, therefore, the relevant ingredients of Section 108 B.N.S. are not attracted.

7. Learned counsel for the applicant has stated that the charge-sheet has been filed in this case. There is no criminal history of any kind whatsoever against the present applicant. He has undertaken on behalf of the present applicant that the applicant shall not misuse the liberty of bail, if so granted by this Court, and shall abide by all terms and conditions of the bail order and shall cooperate in the trial proceedings properly.

8. On the other hand, learned Additional Government Advocate as well as learned counsel for the complainant/ informant have vehemently opposed the aforesaid bail application by submitting that the present applicant is a habitual drunkard and he used to beat his wife (since deceased) for the reason that she was having only two daughters and not the son, therefore, he is not entitled for grant of bail, but they could not dispute the aforesaid contention of learned counsel for the applicant.

9. Having heard learned counsel for the parties and having perused the material available on record; considering the fact that no specific allegation has been levelled against the present applicant; during the course of investigation no material was found to suggest that the deceased was murdered; the deceased committed suicide by consuming poison as the Forensic Science Laboratory report (Annexure No.SA-1) says that the deceased consumed Aluminium Phosphide; the statement of the complainant recorded under Section 180 B.N.S.S. wherein he has stated that the marriage of his daughter with the present applicant was solemnized in the year 2013, since then, she was living happily with her son-in-law; there is no criminal history of any kind whatsoever against the present applicant and the undertaking that the applicant shall not misuse the liberty of bail and shall abide by all terms and conditions of the bail order and shall cooperate with the trial proceedings properly and without expressing any opinion on merits of the case, I am of the view that the present applicant may be enlarged on bail.

10. Accordingly, the instant bail application is ***allowed***.

11. Let the applicant (Lakhan Nishad) 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 IPC/269 of the B.N.S., 2023.

(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./84 of B.N.S.S., 2023 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 IPC/208 of the B.N.S., 2023.

(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./351 of B.N.S.S., 2023. 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. The present applicant shall not leave the country without prior permission of the Court.

[Rajesh Singh Chauhan,J.

Order Date :- 20.12.2024
Suresh/