

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 16094 of 2024

Applicant :- Bhudev

Opposite Party :- State of U.P.

Counsel for Applicant :- Jai Raj

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Sri Jai Raj, learned counsel for the applicant, Shri A.K. Sand, learned Government Advocate assisted by Mr. D.P. Singh, learned AGA appearing for the State and perused the material on record.
2. In compliance of earlier order of this Court dated 25.04.2024, the Investigating Officer Sri Sunil Kumar Lamba is present before this Court. His personal affidavit is taken on record.
3. Personal affidavit does not explain the reason as to how the I.O. converted Section 302 IPC into Section 306 IPC, however, in Paragraph No. 4 of the said affidavit, it is averred that he tenders unconditional apology for the inconvenience.
4. While hearing bail applications this Court has experienced that in most of the cases the Investigating Officers discharge their duties perfunctorily as per their own whims sans adhering to the obligations they are assigned with. The offence under Section 302 IPC is converted to Section 306 IPC in a casual manner without collecting material evidence in support. They even do not mention the cause based upon which they reach at the conclusion of converting the offence into different section.
5. In the order dated 25.04.2024, this Court has expressed concern over the disturbing trend of filing chargesheets indiscriminately especially in the cases of murder, without due diligence in evidence collection, and required the Director General of Police to intervene and issue comprehensive guidelines to rectify these deficiencies.
6. Considering the explanation as disclosed in the personal affidavit, this Court finds ineptitude on the part of aforesaid

Investigating Officer, thus, directs the Commissioner of Police, Police Commissionerate, Agra to send this officer under some special training to skill him for investigations of offences especially under Section 302 IPC, and till completion of his training he be not entrusted with any investigation.

7. The training certificate of the said officer and the guidelines issued by the Director General of Police, U.P., Lucknow, as observed in previous order of this Court, be communicated to the Registrar General of this Court which shall be placed on the record of this case.

Order on Bail

8. Instant bail application has been filed by the applicant - Bhudev for grant of bail in Case Crime No. 519 of 2023, under Section 306 IPC, Police Station Shahganj, District Agra.

9. As per the allegations in the first information report lodged on 23.10.2023 at about 18:16 hrs., informant's daughter Meera married the applicant 14 years ago. They were blessed with two daughter and one son. In the night of 13/14.08.2020 at about 11 O'clock, the informant had conversation with his daughter, wherein she said that family of in-laws is planning to kill her. In the same night at about 3 O'clock, father-in-law of deceased informed that Meera was having pain in stomach, due to which she expired. When the informant reached at matrimonial home of her daughter, he found that face of her daughter turned bluish, from which he suspected that family of the in-laws had given her poison. He approached the police, whereupon the body of his daughter was sent for postmortem. The postmortem was conducted on 14.08.2020 in S.N. Medical College, however, the cause of death could not be ascertained, thus, the viscera is preserved. It was further alleged that the applicant is alcoholic and had illicit relation with one Pooja, about which the informant's daughter complained to her in-laws but they did not pay attention and supported the applicant. The applicant used to beat his wife Meera. In the night of 13/14.08.2020 they forcibly gave some poisonous substance, due to which she expired. Despite application been given to the higher authorities, no FIR was lodged, therefore, an application under Section 156(3) Cr.P.C. was moved.

10. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case being husband of the deceased. It is further submitted that initially the FIR was lodged under Section 302 IPC, however, after

investigation chargesheet has been submitted under Section 306 IPC. It is next contended that the Investigating Officer has not been able to collect any evidence to show that the applicant had instigated his wife to commit suicide by consuming poison, and due to laxity on the part of the officer no such evidence has been collected to show that any such circumstance was created by the applicant abetting his wife to commit suicide. It is because she doubted that her husband had illicit relation with some lady, therefore, she being upset has committed suicide by consuming poison.

11. Learned A.G.A. has also opposed the bail prayer of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, he does not deserve any indulgence. It is further submitted that the offence is cognizable and serious in nature and in case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

12. The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because he or she is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

13. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

14. The object of the bail is to secure the attendance of the accused, the detention of the accused pending trial cannot be punitive in nature as there is presumption of innocence in favour of the accused person. Learned A.G.A. has not brought any facts and circumstances to demonstrate that the character of the accused-

applicant (s) is such that his mere presence at large would intimidate the witness. Learned AGA for the State has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

15. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, the period of detention of the applicant for the alleged offence, submissions of learned counsel for the parties, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

16. Let the applicant involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of the court concerned, subject to the following conditions:

- (i) The applicant will not tamper with the evidence during the trial.
- (ii) The applicant will not pressurize/intimidate the prosecution witness.
- (iii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.
- (iv) The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
- (vi) The applicant shall not leave India without the previous permission of the Court.
- (vii) In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.
- (viii) 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.

17. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

18. The trial court shall conclude the trial within one year by posting the matter for day-to-day hearing without granting any adjournment to either party.

19. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

20. Registrar (Compliance) shall communicate copy of this order to learned Government Advocate; Director General of Police, U.P., Lucknow; Commissioner of Police, Police Commissionerate, Agra, and concerned Trial Court, for compliance at their end.

Order Date :- 21.5.2024

DS