

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39578 of 2024

Applicant :- Rupesh Kushwaha

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikas Tiwari

Counsel for Opposite Party :- Akshansh,G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Vikas Tiwari, learned counsel for the applicant and Sri Akshansh, learned counsel for the informant as well as Sri Amit Kumar, learned State Law Officer and also perused the material available on record.

3. Applicant seeks bail in **Case Crime No.** 146 of 2024, **under Section 36** of I.P.C., **Police Station** - Chirgaon, **District** - Jhansi, during the pendency of trial.

4. This Court finds that learned counsel for the applicant could not assist the court in a proper way, as such, I myself have perused the case diary, FIR and other relevant documents filed with the bail application.

5. A perusal of FIR indicates that the applicant, who happens to be the husband of the deceased person, used to instigate the deceased person to establish illicit relationship with her brother-in-law (Jeth) but after her refusal, the applicant and other named accused persons have committed her murder on 19.04.2024.

6. This Court finds following grounds after perusal of record:-

(i) that the FIR is delayed by 20 days and there is no explanation of the said delay caused.

(ii) the cause of death has been found to be asphyxia as a result of *ante mortem* hanging.

(iii) the inquest report of deceased person indicates that the panch witness no.1, who is the husband of the informant, and another panch witness no.5, who is the son of the informant, were very much present at the stage of recording of inquest proceedings. Their presence at the time of recording of inquest proceedings indicates that there was no foul play in the said incident.

(iv) the cause of death also speaks otherwise, as such, after thorough investigation, the case was transformed u/s 304 IPC.

(v) no overt act has been assigned to any person whatsoever.

(vi) the Supreme Court in ***Ude Singh and Ors. vs. State of Haryana, (2019) 17 SCC 301*** observed:-

"16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions aboveresferred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

(vii) he has no criminal history.

(viii) he is languishing in jail since 17.07.2024.

7. In case, the applicant is released on bail, he will not misuse the liberty of bail and shall cooperate with trial.

8. Per contra, learned counsel for the informant as well as learned State Law Officer have vehemently opposed the bail application but could not dispute the aforesaid fact.

9. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, and taking into consideration the settled law of the Supreme Court passed in ***Ude Singh and Ors. vs. State of Haryana (supra)***, **Satender Kumar Antil vs. Central Bureau of Investigation and Ors., 2022 INSC 690** and **Manish Sisodia vs. Directorate of Enforcement, 2024 INSC 595** and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed**.

10. Let the applicant- **Rupesh Kushwaha**, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

12. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date:- 25.11.2024

Siddhant

(Justice Krishan Pahal)