

A.F.R.

Court No. - 21

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Case :- BAIL No. - 452 of 2021

Applicant :- Shameem Ahmad

Opposite Party :- State of U.P.

Counsel for Applicant :- Jitendra Singh

Counsel for Opposite Party :- G.A.

(In residence)

Hon'ble Vikas Kunvar Srivastav,J.

1. The case is called out through video conferencing.
2. Learned counsel for the bail-applicant Sri Jitendra Singh, Advocate and learned A.G.A. for the State Sri Prem Prakash, Advocate are connected through video conferencing in virtual hearing of the case.
3. The present bail-application is moved on behalf of accused-applicant- Shameem Ahmad, who is involved in Case Crime No.209 of 2020, under Sections 306/511/109/506/504 of I.P.C., registered at Police Station Hussainganj, District Lucknow.
4. Reading over the first information report lodged on 20.10.2020, learned counsel for the bail applicant submits the prosecution case, as emerging from the first information report and the statements of the witnesses that the informant-wife of the deceased, who belongs to Kolkata (West Bengal), resides from 10-12 years as a tenant in House No.155, Diamond Dairy, Udaiganj, District Lucknow which is owned by one Zaved Khan, the co-accused. The landlord Zaved Khan wanted them to vacate the house, therefore, her husband-the deceased (Surendra Chakraborty) filed a suit against him for harassing them. On 19.10.2020 in the afternoon, Zaved Khan came to the house, started abusing her husband in filthy language and asked him to vacate the house. When her husband told him his being in financial trouble and inability to vacate the house, the landlord Zaved Khan scoldingly asked him to set himself ablazed and die, if he is not able to vacate the accommodation. However, on prayer and request made by the complainant and other people, the landlord Zaved Khan went

back. Afterwards, her husband under humiliation became depressed and so sad that started thinking about suicide.

5. It has been further alleged that journalists Shamim (the present accused-applicant) and Naushad Ahmad (the co-accused), contacted her husband (deceased) and induced him to set himself ablazed into fire just in front of "Vidhan Sabha Bhawan" so that they may filmed the incident by videography and telecast the same on television. If it happens, the matter, so as planned will get highlighted and no one will force him to evict him from his house. Under the aforesaid inducement, given by both the accused i.e. the accused-applicant-Shamim and co-accused, Naushad Ahmad brought her husband (the deceased) in front of "Vidhan Sabha Bhawan", where her husband, as induced and planned, poured oil on him and lit fire, the accused journalists were making video of the incident. The policemen present there, ran to save her husband by covering him with a blanket and took him to a hospital where he subsequently died on 24.10.2020.

6. Learned counsel for the bail-applicant in the above context argued that after registering first information report, police started investigation and the statements of complainant and witnesses were recorded, wherein prosecution finds no support. Learned counsel further submitted that the applicant and the complainant do not know each other neither they have any relation nor he is any beneficiary, if the said house is vacated, the landlord Zaved Khan will only be benefited.

7. Learned counsel further submitted that the name of present accused-applicant has been arrayed in the column of accused only when he tried to help the deceased on the spot of incident with the help of police subsequently made a video for evidence as he is a journalist by profession and passing thereby at the time of incident. Learned counsel further submitted that it is a settled principle of law that a passing reference been made against any person would not be sufficient to invite the penalty under the provisions of Section 306 I.P.C.

8. Learned counsel further submitted that in order to constitute abatement for suicide, there must be course of conduct or any such actions of intentionally aiding or facilitating another person to end life but the perusal of the F.I.R. does not disclose any such evidence or

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allegation which could invite the penalty under Section 306 of the I.P.C.

9. Learned counsel further submitted that in order to constitute abatement, intentional involvement of a person to aid or instigate commission of suicide is imperative and any severance or absence of any of these constituent would mitigate against the said indictment.

10. Learned counsel further submitted that there is no evidence to the effect that the applicant had indulged in any such instigation or abatement which could invite the allegations leveled against the applicant for abating to commit suicide and as a matter of fact, no such statement of deceased has been recorded during his treatment in hospital nor in front of any magistrate.

11. Learned counsel further submitted that the applicant is co-editor of Daily Hindi Newspaper in Janma Prasaran Times and RTI Activist and due to this very reason so many officials were annoyed with him, therefore, he has falsely been implicated in the present case.

12. Learned counsel further submitted that no overt act of abating or any omission on part of the applicant has been leveled against the applicant, the applicant is not a previous convict by any court of law and for no fault of him, he is languishing in jail since 21.10.2020. However, learned counsel further submitted that the applicant is ready to furnish adequate and reliable sureties for his release and has a permanent residence, therefore, there is no possibility of his absconding.

13. It is also argued by learned counsel for the bail-applicant that the accused-applicant is entitled to be given parity as the co-accused, Zaved who was landlord, has already been granted bail by the Sessions Court vide order dated 31.10.2020.

14. Protesting the bail plea as argued by learned counsel for the bail-applicant, learned A.G.A. for the State submitted that accused-applicant was in regular touch with the deceased and he has enticed the deceased to commit suicide as it is revealed from the call records of the accused-applicant, moreover, three mobile phones are also recovered from him. Learned A.G.A. further submitted that the deceased was immediately carried to the Civil Hospital from where, he was referred to Sips Hospital but subsequently he died on 24.10.2020 during his treatment.

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15. Learned A.G.A. for the State further submitted that the present accused-applicant is a person of mischievous character. On the basis of instructions received to him, he has submitted that it is sufficient to show the instinct of the accused that he will affect adversely the witnesses and the evidences against him, if released on bail. Learned A.G.A. further submitted that even after the lodging of first information report, nature and behavior of the accused-applicant are enough to dis-entitle him for grant of bail at this stage.

16. Learned A.G.A. further submitted that the learned trial court need be directed to proceed expeditiously so as the complainant's evidences alongwith other material witness of the fact are recorded so that the complainant may be saved from being affected adversely by reason of long drawn trial.

17. Having heard the arguments of learned counsel for the accused and learned A.G.A. for the State, perused the relevant documents available on record. The identity card of the accused has been presented on behalf of the accused. Thus, the fact alleged in the F.I.R. that he had contacted the deceased as a T.V. journalist is an accepted fact.

18. The dispute of tenancy between the deceased and his building owner, Zaved was pending in the Civil Court, this fact is also known from the evidence collected by the prosecution. The fact mentioned in the F.I.R. that Zaved was insisting on paying the rent due or vacating the house and when the deceased refused to do so as usual citing his financially tight condition, angered Zaved, abused in anger and said that pay the rent otherwise leave the house or die by burning somewhere. Immediately after this incident, the deceased did not commit the incident of setting himself on fire, so that it can be called an abatement to suicide. The incident of self immolation occurred after five days on 24.10.2020.

19. The journalist keeps an eye on the anticipated or sudden events happening in the society and brings them to the information of all the people through various news media without any tampering, this is his business.

20. A journalist is not expected to dramatize a sensational and horrifying incident and make news by putting his actor in pitiable condition in danger of death.

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21. In this case, from the statement of the F.I.R. and the statements of the oral witnesses which have been recorded during the investigation, prima facie it is established that the accused tempted the deceased that if he would try to commit suicide in front of the Legislative Assembly building, by making a video of him, he will telecast the same on television with matter of misbehavior of Zaved with him. After this Zaved will not be able to evict him out from the house.

22. During the investigation as electronic evidence, the investigator has seized the video camera and film from the accused, evidence of independent witness, an electronic engineer named Kuldeep Singh posted in control room of Secretariat stated on the basis of C.C.T.V. installed on the gate no.4, given statement which is annexure no.7 to the counter affidavit, which discloses, according to the plan, the deceased reached in front of the Legislative Assembly building in front of the gate no.3, stood at middle of the road, put oil on himself and set it on fire, meanwhile, a man identified as accused was seen recording the film of the deceased even prior to this incident of his self burning. Instead of saving the grievously burning deceased, the accused kept on filming it till he was badly scorched. Policemen were also seen trying to rescue the deceased from burning in the confiscated film.

23. In these evidences, the case of the prosecution against the accused is prima facie established that he told the deceased, living in mental and financial distress, to the temptation and plan to get rid of them. He was present with the deceased at the scene of the incident and filming it. Therefore, the claim of his innocence by the accused is prima facie not established.

24. So far as the grant of bail to the co-accused, Zaved is concerned, the benefit of parity could not be given in the case of present accused-applicant because in case of Zaved, only a passing remark to go and die by burning was made on 19.10.2020. The deceased has not committed suicide in pursuance of and under the effect of that remark. In case of Zaved, no overt act in furtherance of his inducement, is done to facilitate or to compel the deceased to commit suicide. The suicide was committed on 24.10.2020, only after the plan suggested by the present accused-applicant.

25. So far as the personal liberty of the accused and his right to be released on bail is concerned, it is not valid in violation or in breach of

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fundamental right of the other party. The complainant, who is already mentally distressed by her husband's financial condition, who further committed suicide under the influence of the accused, if the accused is made free, she would be in danger. She is the main witness in the case. For fair trial, the complainant would need a completely fear-free environment as a witness. She has the right to have a fair trial of the matter.

26. The criminal details of the accused are given in the counter affidavit, which is as follows:-

- "1. Case Crime No.171/1999, under Sections 504, 506 and 427 of I.P.C. registered at Police Station Cantt., District Lucknow.*
- 2. Case Crime No.478/1999, under Sections 3/25 of Arms Act, registered at Police Station Mahanagar, District Lucknow.*
- 3. Case Crime No.21/2000, under Sections 160 of I.P.C., registered at Police Station Hussainganj, District Lucknow.*
- 4. Case Crime No.22/2000, under Sections 4/25 of Arms Act, registered at Police Station Hussainganj, District Lucknow.*
- 5. Case Crime No.27/2000, under GOONDAS Act, registered at Police Station Hussainganj, District Lucknow.*
- 6. Case Crime No.494/2000, under Section 110 of G. Act, registered at Police Station Hussainganj, District Lucknow.*
- 7. Case Crime No.86/2004, under Section 110 of G. Act, registered at Police Station Hussainganj, District Lucknow.*
- 8. Case Crime No.117/2010, under Section 110 of G. Act, registered at Police Station Hussainganj, District Lucknow.*
- 9. Case Crime No.275/2010, under Section 110 of G. Act, registered at Police Station Hussainganj, District Lucknow.*
- 10. Case Crime No.330/2013, under Sections 323, 504, 427 of I.P.C., registered at Police Station Hazratganj, District Lucknow.*
- 11. Case Crime No.228/2014, under Sections 386, 506 of I.P.C., registered at Police Station Wazirganj, District Lucknow."*

27. These criminal details also cast doubt on him that he will take undue advantage of his immunity and his status on bail.

28. Factors laid down in various judgment of Hon'ble the Supreme Court for grant or refusal of bail are as follows:-

- "(i) Whether there was a prima facie or reasonable ground to believe that the accused had committed the offence;*

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- (ii) nature and gravity of accusations;
- (iii) severity of the punishment in the event of a conviction;
- (iv) danger of the accused absconding or fleeing, if granted bail;
- (v) character, **behavior, means, position and standing of the accused;**
- (vi) **likelihood of repetition of the offence;**
- (vii) reasonable apprehension of the witnesses being influenced;
and
- (viii) danger of justice being thwarted by grant of bail."

29. Hon'ble the Supreme Court further in the case of ***Sudha Singh Vs. The State of Uttar Pradesh & Anr.*** reported in ***AIR 2021 SC 2149*** held as follows:-

"12. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail."

30. The application of the bail moved on behalf of accused-applicant on the basis of above discussions is ***rejected***.

31. The accused-applicant also has right of speedy trial. It is informed by learned A.G.A., charge sheet has already been submitted before the trial court. The officers entrusted with the prosecution i.e. Sri Manoj Tripathi, D.G.C. (Criminal), Lucknow and Sri Surya Bhan, Joint Director (Prosecution), Lucknow is directed to ensure the prosecution witness before the trial court expeditiously and get them examined so that the trial court may be able to decide the case expeditiously within a prescribed period of one year.

32. Learned trial court below is also directed to expeditiously proceed with the trial and conclude the same within a reasonable period of one year from the date, certified copy of the order is placed before it. In deciding the case on merit, the trial court need not to be swayed away with any observation made by this Court in the order.

33. Learned Senior Registrar is directed to communicate the order of the Court with regard to the expeditious disposal to both, the officers of the police department and the trial court also.

34. The present accused-applicant may have right to avail remedy of bail afresh after expiry of aforesaid period.

Order Date :- 21.6.2021/Saurabh