

Court No. - 64

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Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37032 of 2020

Applicant :- Sameer Ali Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

Counter affidavit filed by learned A.G.A. today in the Court is taken on record.

Learned counsel for the applicant has declined to file any rejoinder affidavit and on the insistence of learned counsel for the applicant, the Court is inclined to decide the case on merits.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

The applicant is facing prosecution in Case Crime No.09 of 2020, u/s 306 I.P.C., P.S.-Kotwali, District-Rampur. He is in jail since 19.3.2020 and is seeking his bail in aforesaid case crime.

The genesis of the case starts from initially lodging of the F.I.R. by one Adil (brother of the deceased) on 15.1.2020 against the applicant and Rajni Singh Thakur u/s 498A, 304B I.P.C. and Section 3/4 of D.P. Act. As per the text of the F.I.R., the sister of the informant got married about six months back according to Muslim Rites and she was subject matter cruel treatment with regard to additional dowry by her husband and other in-laws. She used to share her woeful story of such atrocities faced by her with her mother. On 13.01.2020, after hatching conspiracy the accused persons administered her some poisonous substance and killed her. The police has informed her sister Shabnam about the incident.

After registering the case, the Police started investigation into the matter and it was borne out during investigation that alleged allegations of additional dowry were incorrect and thereafter, after collecting the material the Police has changed the texture of the case and submitted the report u/s 173 (2) of Cr.P.C. only for the offence u/s 306 I.P.C., dropping all sections in which the F.I.R. was initially registered.

Contention raised by learned counsel for the applicant is that the present applicant is, in fact, the third husband of the deceased. On the earlier occasion the deceased got married with one Islam and the couple were blessed with a son. Unfortunately that marriage could not survive for long and after seeking divorce from Islam, the deceased again got married with one Naeem. Since the second husband was a habitual drunkard and used to maltreat her, the deceased got separated from Naeem also. Lastly, about six months back the deceased got married with the applicant as per the version of the F.I.R.

During investigation the Police has recorded the statement of Shabnam, real sister of the deceased, in which she has given a vivid description of the incident. It has been stated by witness Shabnam (sister of the deceased) that about three days back the deceased has given a call to her, expressing her desire to meet his son but the applicant was physically torturing her and not permitting her to meet her son. She further stated that on 14.01.2020 she received a call from the police that her sister has consumed some poison. It was further stated by Shabnam that she too had requested the applicant to permit her sister to meet her son, which was declined by the applicant point blank.

Learned counsel for the applicant has drawn attention of the Court to G.D. No.56 dated 14.01.2020, which is annexed as

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Annexure-2 to the petition, indicating that the co-accused Rajni Singh has admitted that, the deceased had got married with her son Sameer and on 13.01.2020 and she was insisting to bring back her son who is staying with Islam, her erstwhile husband. When her demand was severely resisted by the applicant, the deceased has consumed some poisonous substance. It is the applicant, who carried the deceased to the District Hospital Moradabad and thereafter Sunrise Hospital and while she was shifting to Tirthankar Medical University, enroute she died.

On this learned counsel for the applicant has tried to impress upon the Court that it is the husband who has made all efforts to save the life of his wife and provided all necessary medical succour to her.

I have heard learned counsel for the applicant at length. The analogy that the applicant has carried his ailing wife to the hospital and provided her all necessary medical assistance to save her life, would not go to absolve the applicant from the guilt of the offence committed by him. This might be a mitigating factor, but fact remains, that stiff resistance was put by the applicant on her wife not permitting her to even meet with her son. This by itself might have given an emotional jerk and jolt to a mother who cannot even meet or see his son. Assessing or visualizing from the side of the mother, who is said to be the first and the most sensitive person towards her child, she was not even permitted by her own husband, with whom she has got married barely four months back. The Court can easily fathom and gauge the emotion and sentiments of the mother towards her minor son. With this cruel treatment of her husband, the deceased must have suffered with psychological, emotional and sentimental jerk and in this stage of mental turmoil, she has taken

this extreme step. The applicant is the third husband of the lady and she is residing with her husband at his mercy but the applicant has exploited his position as a husband and prevailed upon her, by not permitting her to even meet her son. In this regard the Court has laid its hand on a judgment of Hon'ble Apex Court in the case of **Chitresh Kumar Chopra vs State (Govt. of NCT of Delhi)**, 2009 16 SCC 605 and in this context it would be germane to spell out paragraph 16 of this judgment, as follows :

“16. Speaking for the three-Judge Bench, in Ramesh Kumar case [Ramesh Kumar v. State of Chhattishgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088], R.C. Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.”

In the instant case, certainly the applicant has taken his wife Sabreen to various hospitals for medical succour after she has consumed the poison, but prior to this incident there was coercive stiff and resistance at the behest of the applicant that she was not even permitted to meet/see her son and to pacify her emotional quench. This continued course of conduct, where she was not even permitted to see his son, has proven acute nostalgia

for her and in that stage of severe psychological turmoil, she was left with no other option but to take this extreme step. As mentioned above, only providing the medical assistance to his wife may be justified morally to some extent, but it would not go to absolve the applicant from the allegations of abetment to commit suicide. This might be a mitigating factor but the conduct of the husband was not only cruel, inhumane towards his wife but has sufficiently charged the deceased to take this extreme step. The offence of abetment may be committed directly but the same can also be accomplished by creating such circumstances which may amount to abetment. The applicant *prima facie* seems guilty of committing extreme cruelty towards his wife and because of her intense affection towards her son, he conducted and behaved in such a manner incessantly that there was no other option left for the deceased-wife than to take such extreme step.

Under circumstances, I do not find any good reason to exercise my power u/s 439 Cr.P.C., accordingly, the bail application stands rejected.

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.

Learned Trial Judge is free to form its own judicious opinion unaffected by any of the observation made above while deciding the bail application.

Order Date :- 21.1.2021
Sumit S/M. Kumar