

Court No. - 52

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14403 of 2021

Applicant :- Tahir Khan

Opposite Party :- State Of U.P And Anothers

Counsel for Applicant :- Shams Uz Zaman,Rajiv Lochan Shukla,Rakesh Kumar Tiwari

Counsel for Opposite Party :- G.A.,Rajeev Giri

Hon'ble Samit Gopal,J.

Heard Sri Mukesh Kumar Pandey, Advocate holding brief of Sri Shams Uz Zaman, learned counsel for the applicant, Sri Rajeev Giri, learned counsel for the opposite party no. 2 and Sri Phool Chandra Singh, learned A.G.A. for the State and perused the material on record.

A Compliance Affidavit-2 dated 25.10.2021 has been filed by learned A.G.A. today in Court, which is taken on record.

On 5.10.2021 the following order was passed by a co-ordinate Bench of this Court :-

"It is stated by learned AGA that the charge-sheet has been filed under Section 363, 366 of IPC read with Section 3(2) 5 of SC/ST Act and Section 11/12 of POCSO Act, against the applicant. It is also an admitted case that the victim was kidnapped by the applicant and he got the victim admitted in the hospital where she died on 3.11.2020.

The investigating officer, who submitted the charge-sheet is directed to appear before this Court on the next date, explaining the circumstances in which he has filed the charge-sheet in the aforesaid sections. Although, the victim is reported to be dead and why the charge-sheet was not filed under Section 302 of IPC against the applicant and other accused person.

Put up on 25.10.2021 as fresh."

In compliance of the said order Sri Rajesh Kumar Singh, C.O. City, Jhansi/Dy. S.P., Jhansi and Sri Aditya Awasthi, Sub-Inspector, P.S.- Mauranipur, District Jhansi are personally present before the Court.

The affidavit filed by learned A.G.A. has been placed by him and while placing the post mortem report dated 05.11.2020 of

the deceased, the copy of which is annexed as annexure no. 3 to the Compliance Affidavit-2, it is argued that cause of death of the deceased has been opined as due to 'cardio respiratory failure' and the doctor has found the evidence of pathology present in pericardium and liver, but still viscera was preserved for chemical analysis which was handed over to the police personnels of Police Station Chunabhatti, Bhopal Police. It is argued that the said viscera was handed over to the U.P. Police which was then sent on 2.3.2021 for chemical analysis. The date of sending the viscera is being stated from annexure no. 9 to the Compliance Affidavit-2 which is a reminder letter dated 21.10.2021 sent to the Director, Forensic Lab, Agra. Further page-85 has been placed which is the response dated 22.10.2021 of the Deputy Director, Forensic Lab, Agra in which in just seven words he has stated that the referred material has not reached its serial in the queue.

Learned A.G.A. has further placed annexure no. 7 to the Compliance Affidavit-2 which is the purcha dated 22.12.2020 and has argued that in so far as the applicant and the co-accused Nasir Khan are concerned, charge sheet has been submitted against them. The recital in the said purcha is that against the applicant charge sheet has been filed under Sections 363, 366 I.P.C., Section 3(2)5 S.C./S.T. Act and Sections 11/12 POCSO Act whereas against the co-accused Nasir Khan charge sheet has been filed under Section 368 I.P.C., Section 3(2)5 S.C./S.T. Act and Sections 16/17 POCSO Act being Charge Sheet No. 502 of 2020, dated 22.12.2020. It is argued that as and when the report of Forensic Lab is received, the same shall be supplemented in the investigation and forwarded to the concerned court for necessary action and consideration in the matter.

Be that as it may, the examination of viscera is also an integral part of investigation which may provide a link regarding the cause of death or give a lead in the matter. In so far as the offence is concerned the delay in examination of viscera and due to the same being wanting, the Investigating Agency forwards reports under Section 173 Cr.P.C. before the court concerned, on which court takes cognizance and proceed with the matter and then at some stage the report of viscera is supplemented as document of investigation. In totality of circumstances, investigation remains lacking in the event of non-receipt of report of Chemical Examiner. The delay in examination of viscera is seen not only in this case but in many other cases. Result is thus that the opinion of the Investigating Officer is lacking in so far as the opinion of expert with regards to viscera is concerned. It is observed that there is no method evolved till date for speedy analysis of viscera so that the

investigation may be completed in one go and a report may be filed after its conclusion in whatsoever nature it may be.

In the present case, learned A.G.A. on his oral instructions states that the viscera report is expected to be made available within three weeks. Although there is no material contrary to dispute the said instructions and the statement of learned A.G.A. but the same is only on the basis of some expectation and persuasion which may have been done by the Investigating Agency. There is no proper method evolved for expeditious examination of viscera which would help the Investigating Agency to reach to its conclusion in the matter.

The higher authorities being Director General of Police, U.P., Lucknow and the Secretary, Home, Government of U.P., Lucknow are called upon to take up this issue at their end for expeditious examination of viscera to help the Investigating Agency and also which would not be an impediment before the courts in deciding matters.

On the request of learned A.G.A., the matter is adjourned for today. He is directed to get the examination of viscera expedited and file its report by 11.11.2021 by means of an application/affidavit and further to inform by an affidavit regarding anxiety of this Court as shown in the order dated 5.10.2021, failing which the Officers present today shall again appear in person before the Court on that date.

List on 11.11.2021 as fresh.

Learned A.G.A. shall communicate this order after downloading it from the official website of this Court to the officers concerned for its compliance and necessary action.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the applicant(s) along with a self attested identity proof of the said person(s) (preferably Aadhar Card) mentioning the mobile number(s) to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

(Samit Gopal,J.)

Order Date :- 25.10.2021/Naresh