

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46047 of 2021

Applicant :- Najim Hussain

Opposite Party :- State of U.P.

Counsel for Applicant :- Ved Prakash Mishra, Jai Shanker Malviya

Counsel for Opposite Party :- G.A., Janardan Prasad Tripathi

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Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44992 of 2021

Applicant :- Smt. Areeba

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd Aadil Siddiqui

Counsel for Opposite Party :- G.A., Sweety Srivastava

Hon'ble Rahul Chaturvedi, J.

(1) There are two connected criminal misc. bail applications moved by the applicants Najim Hussain and Smt. Areeba and both are being named accused of case crime no. 463 of 2021, under Section 306 IPC, P.S. Katghar, District Moradabad and for the sake of brevity both the bail applications are being heard and decided by a common order.

(2) Both the applicants are facing prosecution in case crime no. 463 of 2021, under Section 306 IPC and are in jail since 09.09.2021, seeking enlargement on bail in exercise of power under Section 439 Cr.P.C.

(3) Heard Sir Jai Shanker Malviya, learned counsel for the applicant, Sir Janardan Prasad Tripathi, Ms. Sweety Srivastava, learned counsel for the complainant and learned AGA for the State and perused the material brought on record.

(4) The delayed FIR was registered by Sri Danish on 30.08.2019 for the incident said to have been taken place on 20.08.2021, there is not plausible justification coming forward to explain this delay. From the record, it is clear that the informant himself is not an eye witness to the incident and whatever the story narrated by him in the FIR is on the basis of some hearsay of others. The FIR was registered against the applicants Najim Hussain and Areeba with the allegation that on 22.08.2021 around 11.30 p.m. in the night, the wife of the deceased Jakir @ Choota (informant's brother) has given an information to the house of brother-in-law (Behnoi) of the informant that his younger brother Jakir @ Choota has sustained sudden cardiac arrest, on which the informant rushed to the Jakir's place where he saw that the dead body of Jakir was lying on the bed, which was carrying ligature mark around his neck. It is further submitted that the applicant-Nazim often used to visit his brother's place and has developed an intimate relationship with Jakir's wife Smt. Areeba. On this account, Jakir @ Chhota and his wife Smt. Areeba-applicant were often in a quarreling terms and was a severe cause of mental concern of his brother-Jakir @ Chhota. It is further mentioned that the deceased's wife Smt. Areeba-applicant without divorcing his husband- Jakir @ Chhota, got married with applicant- Najim. The informant has got firm belief that on account of this extra marital relationship of his wife Smt. Areeba, Jakir @ Chhota has committed suicide.

(5) The case was registered under Section 306 IPC. Provides to the abettor to commit suicide. Learned counsel for the applicant has drawn the attention of the Court to the provisions of Section 107 IPC, which reads thus:-

“107. Abetment of a thing.—A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing

of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

(6) It is further contended by the learned counsel for the applicant that the Investigating Officer during investigation has collected the number of statements of witnesses and every body has given sketchy and perfunctory allegation of extra marital relationship between the applicant- Najim Hussain and applicant- Smt. Areeba, who is legally wedded wife of deceased Jakir @ Chhota. This was the basic root cause of taking extreme step by the deceased by hanging himself.

(7) It has been contended by the learned counsel for the applicant that Danish, who was present at the time of inquest on 23.08.2021, did not expressed a whisper about alleged illicit relationship. The post mortem report too reveals that there is mark of singular ligature ad-measuring 22 x 3 cm around the neck with a gap of 5 cm on the back side of the neck obliquely place on the right side of the neck. A typical injury of hanging and the doctor too has opined that deceased died on account of asphyxia as a result of hanging.

(8) While drawing the attention of the Court to the number of witnesses, namely, Danish, informant who is not an eye witness, Kaleem, Rahees Ahmad, Mohd. Wajid and Pappu @ Sarif Ahmad, all the witnesses in unequivocally terms have stated that since Areeba was nurturing an illicit relationship with the applicant-Najim and this was sole root cause of taking the

extreme step by committing suicide. On this line, there is tangent remark was pasted that the deceased used to share his feelings during his life time with the witnesses that both of them used to curse the deceased and instigate him to commit suicide.

(9) Learned counsel for the applicant has relied upon number of judgements of Hon'ble Apex Court as to whether the extra marital relation though come within the realm of 'cruelty' but would not fall within the four corners of Section 107 IPC.

(10) It has been contended by the learned counsel that the term extra marital affair is termed which has not been defined in the IPC nor it is possible to give steal jacketed definition of the term as the situation may changes from case to case. The marital relationship means a legally protected marital interest of one spouse to another, which includes marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment between them, to have children, their upbringing, services in the home, support, affection, love, liking and so on. Referring to three judgements of Hon'ble Apex Court in the case of (i) **Pinakin Mahipatray Rawal Vs. State of Gujrat** reported in **AIR 2014 (SC)331, (2013)10 SCC 48**, in the case of (ii) **K.V.Prakash Babu Vs. State of Karnataka** reported in **2017, Crl.L.J.**, in the case of (iii) **Ghusabhai Raisangbhai Chourasia and others Vs. State of Gujrat** reported in **AIR 2015 SC 2670, (2015) 11 SCC 753**, judgement of Hon'ble Madhya Pradesh in the case of Anil Patel Vs. The State of Madhya Pradesh decided on 18.02.2020 in Crl. Appeal no. 514 of 2011 and the judgement of Madras High Court in the case of Manickam Vs. State of Tamilnadu decided on 29.09.2018 in Crl. Appeal No. 32 of 2008. Let us examine the obsrvations made by the Hon'ble Court one by one.

(11) In the case of **Pinakin Mahipatray Rawal (supra)** Hon'ble Apex Court while dealing with such type of cases where either of the parties committed suicide on the basis of suspicion i.e.

counter part has developed certain amount of intimate relationship with some third person. The Hon'ble Apex Court has opined that the deceased seem to be too possessive for her husband and always under the emotional stress towards him that she might lose her husband. Too much of possessiveness could also lead to serious emotional stress, over and above the fact that she had one abortion and her daughter died after few days of birth, cumulatively affects that she might lose all the interest in her life and committed suicide. The mere fact that husband has developed some intimacy with another. During subsistence of his marital relationship and way to discharge his marital obligation as such would not amount to "cruelty" but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation of Section 498A IPC.

It was held that the accused has developed an intimacy with her colleague but has not ill-treated the deceased either physically or mentally and the deceased was living with the accused in the matrimonial home till the date but she committed suicide. In the aforesaid circumstances, the Court has held that the alleged extra marital relationship was not such a nature as to drive the wife to commit suicide or that accused has ever intended or accord in such a manner, which under the normal circumstances, would driving wife to commit suicide.

(12) In paragraph 26 of the judgement of Hon'ble Apex Court in the case of **Pinakin Mahipatray Rawal (supra)** observed as under:-

"Section 26. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra-marital relationship, which if

proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide."

(13) In the case of **Ghusabhai Raisangbhai Chourasia** (*supra*), the Hon'ble Court has held which read as under:-

"23. the accused husband of deceased had illicit relations with the appellant, who was divorcee. The deceased wife was residing separately on terrace of house and committed suicide by consuming poison. The Court said that the involvement of accused in illicit relationship, even if proven, was not evidence that mental cruelty was of such a degree that it would drive wife to commit suicide. In the aforesaid situation, the explanation of [section 498-A](#) of IPC is not attracted. The Court also observed that :-

"It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant divorcee, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to [Section 498A](#), which includes cruelty to drive a woman to commit suicide, would not be attracted".

The Supreme Court held in Para 20 of the aforesaid case as under:-

"20. Coming to the facts of the present case, it is seen that the factum of divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the 'Holi' festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of [Section 498A](#), IPC would not get attracted."

(14) Lastly in the case of **K.V.Prakash Babu (supra)** in that case marriage between the applicant and deceased was solemnized on 12.10.1997. The appellant has got involved with another woman. It was the case of prosecution that the deceased felt extremely hurt and eventually being unable to withstand the conduct of the husband who was allegedly involved in an extra-marital affair, put an end to her life on 20.08.2004. The Hon'ble Court observed that :-

“16. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.”

(15) It has come on record that various witnesses that the people talked in the locality with regard to the involvement of the applicant with another lady. It needs to be noted that the deceased being the husband felt betrayed and even to digest the humiliation and have committed suicide.

The Hon'ble Apex Court summarizing the impact of extra-marital relationship and its probable consequences that factual score that has the potentiality to shock a sensitive mind and a sincere heart, for the materials brought on record show how “suspicion” can corrode the rational perception of value of life and

cloud the thought of a wife to such an extent, that would persuade her to commit suicide which entail more death, i.e. of the alleged paramour, and she could not cope up with social humiliation extinguish.

In the instant case too even assumed for the sake of argument, the prosecution story to be true on the face value, the husband has committed suicide under the score that he was under constant threat and quarrelling terms with his wife that she has developed an intimate relationship with the applicant-Najim. The deceased seems to be too sensitive and possessive about his wife, he has many other avenues and alternatives to get rid off her instead of taking is own life by hanging.

(16) Sir Janardan Prasad Tripathi, and Ms. Sweety Srivastava, learned counsel for the complainant have vehemently opposed the bail application by making mentioned that the wife of a person means dignity and honour and if someone has tried to p lay with other or dilute interse relation of husband and wife is an unacceptable proposition and frustrated husband if have committed suicide, the accused persons are liable to be punished under Section 306 IPC.

(17) To the mind of the Court, the allegation made therein of developing extra-marital relationship and this is the reason behind committing suicide. In the light of the aforesaid judgements of Hon'ble Apex Court, the applicants deserve to be bailed out.

(18) After hearing rival submissions of the learned counsel for the parties, the charge sheet has been submitted by the police under Section 306 IPC and nothing remains to be investigated and taking the guidelines of the aforesaid judgements of Hon'ble Apex Court with regard to the extra-marital relationship and its probable consequences in which the Hon'ble Apex Court has clearly and explicitly in its judgement exonerated the accused from the charges under Section 306 IPC and admitted on bail.

(19) Keeping in view the nature of the offence, evidence, complicity of the accused and submissions of learned counsel for the parties, I am of the view that the applicant has made out a case for bail.

(20) Let the **applicants- Najim Hussain & Smt.Areeba**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) THE APPLICANT/APPLICANTS SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE/THEY SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE FIXED FOR EVIDENCE WHEN THE WITNESSES IS/ARE PRESENT IN COURT. IN CASE OF DEFAULT OF THIS CONDITION, IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT IT AS ABUSE OF LIBERTY OF BAIL AND PASS ORDERS IN ACCORDANCE WITH LAW.

(ii) THE APPLICANT/APPLICANTS SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER/THEIR COUNSEL. IN CASE OF HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIS/HER/THEIR UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT/APPLICANTS MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT/APPLICANTS FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIS/HER/THEIR, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT/APPLICANTS 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/APPLICANTS IS/ARE 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 HIS/HER/THEIR IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT/APPLICANTS.

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

(22) Since the bail application has been decided under extraordinary circumstances, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant/applicants to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with emergent condition-:

1. The applicant/applicants shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is/are restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.
2. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.
3. The computer generated copy of such order shall be self attested by the counsel of the party concerned.
4. 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.

Order Date:-06.01.2022

Abhishek Sri/-