

Court No. - 12

1. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4430 of 2021

Applicant :- Umesh Kumar Bajpai

Opposite Party :- State of U.P.

Counsel for Applicant :- Arun Sinha,Ram Chandra Singh

Counsel for Opposite Party :- G.A.

2. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4442 of 2021

Applicant :- Ram Kishor Trivedi

Opposite Party :- State of U.P.

Counsel for Applicant :- Arun Sinha,Ram Chandra Singh

Counsel for Opposite Party :- G.A.

And

3. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4439 of 2021

Applicant :- Hari Shankar Trivedi @ Chhuna

Opposite Party :- State of U.P.

Counsel for Applicant :- Arun Sinha,Siddhartha Sinha

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh,J.

1. Present bail applications under Section 439 Cr.P.C. have been filed seeking bail in F.I.R. No.316 of 2019 registered under Sections 326, 506, 302, 147, 324, 342/34 I.P.C., Police Station Bihar, District Unnao.

2. In the F.I.R., it has been alleged that complainant's sister-Mohini Devi's case was being tried in Raebareli. The victim was to travel on the date of incident by train at 4 A.M. to Raebareli from her place of residence in Unnao. The complainant suspected that his sister was set on fire in the morning of the date of incident i.e. 05.12.2019 while she was going to catch train at 4:00 A.M. by Shubham and Shivam, against whom a case was pending in Raebareli court for which the deceased was to travel by train.

3. The F.I.R. in question came to be registered against accused-Shubham and Shivam on the same day i.e. 05.12.2019 at 12:42 Hours under Sections 307, 326 and 506 I.P.C.

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4. Statement of the complainant-Anil was recorded under Section 161 Cr.P.C. in which he made allegation against five persons namely, Shivam Trivedi, Subham, Harishankar Trivedi, Ram Kishore and Umesh Kumar.

5. During the course of investigation, the Investigating Officer recorded the statements of Ravindra Prakash, Shivkaran Lodhi, Nepal Yadav @ Nanhkau, Phoolmati Lodhi, Roshni Lodh and Seeta Jaiswal. According to the prosecution case, all the aforesaid 5 accused were arrested by the police on the same day from their houses on 05.12.2019 itself, and since then, they have been in jail

6. As per the prosecution, statement of the victim was recorded on 05.12.2019 by S.D.M. Bighapur, Unnao. In the alleged statement, the prosecutrix said that on 05.12.2019 at around 4:00 A.M. she came out of her house to catch the train from Railway Station, Baiswara Bihar. As soon as she reached at Gaura turn, the accused-applicants, accused-Shivam Trivedi and, Subham Trivedi, present there, surrounded her and hit on her head by danda and assaulted her by knife on her neck, and thereafter they sprinkled petrol and set her on fire. It is said that on noticing that she was being put on fire, somebody called the police by making a call at the police station, and then police from Bihar police station reached there. She was taken to Primary Health Centre, Sumerpur. It was said that on 12.12.2018, accused-Subham Trivedi, Shivam Trivedi had raped the prosecutrix for which a case was registered at Lalganj Police station and she was going to pursue the said case pending at Raebareli court.

7. After perusing the alleged statement of victim, the F.I.R. was converted under Sections 147, 307, 326, 342, 323, 506/34 I.P.C. The victim was shifted to Safdarjung Hospital, New Delhi on 06.12.2019 where she died on the same day i.e. 06.12.2019 at 11:40 P.M. and the case was converted under Sections 302, 147, 342, 324, 326, 506/34 IPC.

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8. Learned counsel for the accused-applicants has submitted that the prosecution story is palpably false and it is nothing but a concoction to implicate innocent people. The accused have been victims of media trial. He has submitted that the deceased in her alleged dying declaration had said that she was assaulted on her head by danda and on neck by knife but post mortem report would totally belie the said allegation.

9. It has been further submitted by learned counsel for the accused-applicants that no injury was found on the head and neck of the deceased. According to the opinion of the doctor, who performed autopsy, cause of death was shock as a result of ante-mortem thermal flame burn injuries. He has further submitted that in a case registered under Sections 376D, 506 I.P.C. at Police Station Lalganj, District Raebareli in F.I.R. No.113 of 2019 against accused-Shivam Trivedi and Shubham Trivedi. Accused-Shivam Trivedi was enlarged on bail vide order dated 25.11.2019 in Bail No.11235 of 2019. He has further submitted that on 05.12.2019, no case was pending in the Court against accused-Shubham Trivedi and Shivam Trivedi for which allegedly the victim had to travel on 05.12.2019 at 4-5:00 A.M. in the morning that too all alone. He has further submitted that on the said date even charge-sheet was not filed against accused-Shivam Trivedi and Subham Trivedi and, therefore, prosecution story set up by the complainant is completely false.

10. Dr.Ajeet Singh, Ortho Surgeon, posted at Umashankar Dixit District Hospital, Unnao who examined the deceased in the District Hospital on 05.12.2019 at around 8 A.M., after she was brought there in an Ambulance No.108, specifically in his statement recorded under Section 161 Cr.P.C. said that he did not notice any injury except burn injuries on the person of the victim.

11. Learned counsel for the accused-applicants has been further submitted that the victim has said that she had to travel to Raebareli

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on 05.12.2019 by Train No.54106 but as a matter of fact the train which used to go Raebareli was cancelled since 03.12.2019 and remained cancelled even on 05.12.2019.

12. Learned counsel for the accused-applicants has further submitted that the deceased was putting pressure to perform marriage with accused-Shivam Trivedi but when it could get materialized, on the pressure of the family members an F.I.R. came to be registered against two cousins, Shubham and Shivam Trivedi and then on the instigation of lawyer, Mahendra Singh Rathore, she in order to put pressure on the accused-Shivam and his family, set herself on fire.

13. It has been further submitted by learned counsel for the accused-applicants that it would be highly improbable that the deceased would go all alone walking for more than 2 km to catch a train at 4:00 A.M. to Raebareli to pursue a case, which was not pending in any of the Courts of Raebareli. No reasonable man would believe in the story set up by the prosecution that the accused, who are father and sons and close relations, would know that the deceased would be going to Raebareli at a particular time and they would surround her and commit the crime as alleged.

14. It has been further submitted by learned counsel for the accused-applicants that this may be a case of an act of the victim with broken heart but the accused have been falsely implicated in such a serious offence because of media trial, and they have suffered immensely. Their careers, reputations and families have been destroyed in a false case fostered against them.

15. It has been further submitted that the investigating agency intercepted WhatsApp messages between the victim and lawyer-Mahendra Singh Rathore. The said chat would show that the victim was in physical contact with several persons, which would be apparent from video chats found by the police through her Whatsapp messages.

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16. It has been further submitted by learned counsel for the accused-applicants that when the complainant has been examined in the Court and specific question was put to him whether the train by which the deceased was allegedly to travel to Raebareli on the date of incident was cancelled or not, he had feigned his ignorance about this fact.

17. Learned counsel for the accused-applicants has further submitted that the complainant had said that all five accused had raped the deceased which would also not be possible that the father and sons would commit rape on the victim together. He, therefore, submits that the accused-applicants are entitled to be enlarged on bail.

18. On the other hand, Mr.Ran Vijay Singh, learned A.G.A. has opposed the bail application but has not been able to dispute the aforesaid factual position.

19. I have considered the submissions of learned counsel for the accused-applicants and learned A.G.A. for the State.

20. It is true that the said incident received huge media attention and the complainant and his family received more than adequate financial aid from the Government. If an accused has committed an offence, he must be punished adequately under the provisions of the law, but merely if a case has received publicity and media attention, a person should not be made to suffer unless he is actually guilty for committing the crime.

21. The State in its counter affidavit, has not denied the fact of not receiving any injuries except for burn injuries by the deceased. The State has also not denied the fact that there was no case pending in any Court in Raebareli against the accused-Shubham Trivedi and Shivam Trivedi for which the deceased had allegedly gone in the morning of the date of the incident i.e. 05.12.2019 to catch the train. The State has also not denied the fact that on the said date, the train by which the

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deceased had to take journey was cancelled and it remained cancelled from 03.12.2019 and hat even on the said date charge-sheet was not submitted against the accused-Shivam Trivedi and Shubham Trivedi.

22. Considering the facts and circumstances of the case and also the fact that the accused-applicants have been in jail since 05.12.2019, and without expressing any opinion on the merit of the case, I find it to be a fit case for granting bail.

23. Let applicants Umesh Kumar Bajpai, Ram Kishor Trivedi and Hari Shankar Trivedi @ Chhuna be released on bail in the aforesaid case on their furnishing a personal bond and two sureties of the like amount to the satisfaction of the Magistrate/Court concerned, subject to following conditions :-

(i) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence when the witnesses 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicants is deliberate or without sufficient cause, then it shall be open for the trial court to treat

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such default as abuse of liberty of bail and proceed against them in accordance with law.

(Dinesh Kumar Singh, J.)

Order Date :- 4.5.2022

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