

Court No. - 13

A.F.R.

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4988
of 2022

Applicant :- Puspha Devi W/O Sri Jai Karan Singh

Opposite Party :- State Of U.P. Thru. Prin. Secy. Homr Lko

Counsel for Applicant :- Suresh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

Pleadings have already been exchanged between the parties are on the record.

Heard Shri Suresh Kumar Yadav, the learned counsel for the applicant, learned A.G.A. for the State and perused the record.

The applicant, **Puspha Devi**, has moved the present bail application seeking bail in Case Crime No. 327 of 2018, under Sections 302, 120-B I.P.C., Police Station Mohammadpur Khala, District Barabanki.

Learned counsel for the applicant submits that accused applicant has falsely been implicated in the present case. It is further submitted that the applicant was not named in the F.I.R. and she was summoned under Section 319 Cr.P.C. on the premise of statements of witnesses, P.W.7, P.W.9 and P.W.10 in the trial court who have maliciously taken the name of applicant with intention to implicate the applicant falsely. The complainant in her statement before the trial court has not taken the name of applicant. As per prosecution case, the main role has been assigned to co-accused Gajraj Singh, who has already been granted bail by a co-ordinate Bench of this Court vide order dated 24.04.2019 passed in Bail No.8940 of 2018. One another co-accused, Jaikaran Singh @ Chhoti, who was not named in the F.I.R. and was summoned under Section 319 Cr.P.C. has also been granted bail by a coordinate Bench of this Court vide order dated 26.02.2020 passed in bail No. 10612 of 2020, and the case of applicant is not on the worse footing than that of the co-accused, Jaikaran Singh @ Chhoti, who has been enlarged on bail.

Learned counsel for the applicant further submits that summoning order dated 31.07.2019 is also against the spirit of various judgments of Hon'ble Supreme Court. He placed reliance upon a judgment of Constitution Bench of Hon'ble Apex Court in the case of **Hardeep Singh Vs. State of Punjab & others, (2014) 3 SCC 92**, wherein paragraphs-105 and 106 it has been observed as under:-

"105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

The above Constitution Bench judgment was duly considered by the Hon'ble Apex Court in the case of **Labhuji Amratji Thakor & others Vs. The State of Gujarat and another, 2018 (0) Supreme (SC) 1147**. Paragraph-9 of the aforesaid judgment reads as under:-

"9. The Constitution Bench has given a caution that power under Section 319 Cr.P.C. is a discretionary and extraordinary power, which should be exercised sparingly and only in those cases where the circumstances of the case so warrant. The crucial test, which has been laid down as noted above is "the test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction." The present is a case, where the trial court had rejected the application filed by the prosecution under Section 319 Cr.P.C. Further, in the present case, the complainant in the F.I.R. has not taken the names of the appellants and after investigation in which the statement of victim was also recorded, the names of the appellants did not figure. After carrying investigation, the Charge Sheet was

submitted in which the appellants names were also not mentioned as accused. In the statement recorded before the Police, the victim has named only Natuji with whom she admitted having physical relations and who took her and with whom she went out of the house in the night and lived with him on several places. The mother of victim in her statement before the Court herself has stated that victim girl returned to the house after one and a half months. In the statement, before the Court, victim has narrated the entire sequence of events. She has stated in her statement that accused Natuji used to visit her Uncle's house Vishnuji, where she met Natuji. She, however, stated that it was Natuji, who had given her mobile phone. Her parents came to know about she having been given mobile phone by Natuji, then they went to the house of Natuji and threatened Natuji."

Learned counsel for the applicant has further made reliance upon the judgment of Hon'ble Apex Court in the case of **Brijendra Singh and others vs. State of Rajasthan, (2017) 7 SCC 706**, wherein in paragraphs-13 and 15 it has been observed as under:-

"13. In order to answer the question, some of the principles enunciated in Hardeep Singh's case may be recapitulated: Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ? evidence? against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The ? evidence? herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.

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15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny."

Learned counsel for the applicant has further relied upon the judgment of Hon'ble Apex Court in the case of **Periyasami and others vs. S. Nallasamy, (2019) 4 SCC 342** wherein in paragraphs-14 and 15 it has been observed as under:-

"14. In the First Information Report or in the statements recorded under Section 161 of the Code, the names of the appellants or any other description have not been given so as to identify them. The allegations in the FIR are vague and can be used any time to include any person in the absence of description in the First Information Report to identify such person. There is no assertion in respect of the villages to which the additional accused belong. Therefore, there is no strong or cogent evidence to make the appellants stand the trial for the offences under Sections 147, 448, 294(b) and 506 of IPC in view of the judgment in Hardeep Singh case (supra). The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of

conclusion of the trial convicting the accused.

15. The High Court has set aside the order passed by the learned Magistrate only on the basis of the statements of some of the witnesses examined by the Complainant. Mere disclosing the names of the appellants cannot be said to be strong and cogent evidence to make them to stand trial for the offence under Section 319 of the Code, especially when the Complainant is a husband and has initiated criminal proceedings against family of his in-laws and when their names or other identity were not disclosed at the first opportunity."

Learned counsel for the applicant further submits that prosecution story as set up is totally false and fabricated, no role has been assigned to the applicant, no incriminating article has been recovered from her possession or on her pointing out, the recover of alleged E-Shram Card of applicant from the place of occurrence is false and implanted by the police, there is no strong motive against the applicant and the alleged motive of dispute of money shown by the complainant is baseless and has no force because the alleged amount was taken by the deceased about ten years ago and since then there was no dispute and the applicant has falsely been implicated in the case, therefore, she should be released on bail by this Court sympathetically.

Several other submissions regarding legality and illegality of the allegations made in the F.I.R. have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused, have also been touched upon at length. It has been assured on behalf of the applicant that she is ready to cooperate with the process of law and shall faithfully make herself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon her. The applicant undertakes that in case she is released on bail she will not misuse the liberty of bail and will cooperate in trial. It has also been pointed out that the applicant is not having any criminal history, which fact has been stated in para-33 of the affidavit filed in support of bail application. The applicant is in jail since 21.04.2022 and that in the wake of heavy pendency of cases in the courts, there is no likelihood of any early conclusion of trial.

Learned A.G.A. opposed the prayer for bail, but has not disputed that applicant was not named in the F.I.R. and her name was surfaced for the first time in the statements of P.W.7, P.W.9 and P.W.10.

After perusing the record in the light of the submissions made at the Bar and after taking an overall view of all the facts and

circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence, and considering the fact that the applicant was not named in the F.I.R.; her name was taken by P.W.7, P.W.9 and P.W.10 and she was summoned under Section 319 Cr.P.C., whereupon learned court below has not applied its judicial mind and in a cursory manner summoned the applicant to face the trial; and the main accused, Gajraj Singh has already been granted bail; another co-accused, Jaikaran Singh @ Chhoti, who was also not named and was summoned under Section 319 Cr.P.C., has also been granted bail, as well as considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the cases of **Hardeep Singh (supra)**, **Labhuji Amratji Thakor (supra)**, **Brijendra Singh (supra)**, **Periyasami and others (supra)** and **Dataram Singh vs. State of U.P. and another**, reported in **(2018) 3 SCC 22**, this Court is of the view that the applicant may be enlarged on bail.

The prayer for bail is granted. The application is allowed.

Let the applicant, **Puspha Devi**, involved in Case Crime No. 327 of 2018, under Sections 302, 120-B I.P.C., Police Station Mohammadpur Khala, District Barabanki, be enlarged on bail on her executing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned on the following conditions :-

(1) The applicant will not make any attempt to tamper with the prosecution evidence in any manner whatsoever.

(2) The applicant will personally appear on each and every date fixed in the court below and her personal presence shall not be exempted unless the court itself deems it fit to do so in the interest of justice.

(3) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(4) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(5) In case, the applicant misuses the liberty of bail and in order to secure her presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against her, in accordance with law, under Section 174-A of the Indian Penal Code.

(6) The applicant 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of her bail and proceed against her in accordance with law.

(7) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

(8) 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.

It may be observed that in the event of any breach of the aforesaid conditions, the court below shall be at liberty to proceed for the cancellation of applicant's bail.

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 merit of the case.

Order Date :- 18.8.2022

Mustaqeem