

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4183 of 2023

Applicant :- Shakti Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Bal Mukund Singh, Shri Prakash Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamsery, J.

Heard Sri Bal Mukund Singh, learned counsel for applicant and S/Sri Paritosh Malviya and Vimal Pandey, both learned A.G.A. for State.

Applicant- Shakti Singh, has approached this Court by way of filing the present Criminal Misc. Bail Application under Section 439 Cr.P.C. in Case Crime No.140 of 2022 under Sections 304, 201 I.P.C., Police Station- Purkaji, District - Muzaffarnagar after rejection of his Bail Application vide order dated 06.12.2022 passed by Sessions Judge, Muzaffarnagar,

In the present case, an F.I.R. was lodged by uncle of deceased against three named accused including applicant. It was alleged that three named accused along with deceased were going on a joy ride from Delhi to Haridwar on two motorcycles. Applicant was driving motorcycle with deceased, being pillion rider. Applicant's motorcycle met with an accident in which applicant and victim suffered injuries, however, deceased succumbs to injuries while taking to hospital and named accused threw his dead body and ran away.

Learned counsel for applicant submits that initially F.I.R. was lodged under Sections 279, 304-A, 337 and 201 I.P.C. They were granted bail for the said offences as all the offences were bailable.

Learned counsel further submits that after investigation charge-sheet has been filed under Sections 304 and 201 I.P.C. Meanwhile, during investigation, applicant was arrested on 01.09.2022. Learned counsel also submits that co-accused, who was driving the other motorcycle, has been granted bail by this Court. Learned counsel further submits that applicant is languishing in jail since 01.09.2022 and in case, he is released on bail, he will not misuse the liberty of bail and will cooperate in trial. Learned counsel further submits that even if prosecution story is accepted on the face of it, conviction would not travel beyond 304 Part-II I.P.C.

Learned A.G.A. for State submits that applicant and co-accused were not able to provide medical assistant to deceased and they have thrown his dead body, therefore, it is a case where applicant has intention to cause death, therefore, the case would fall under Part-I of Section 304 I.P.C.

For reference Section 304 I.P.C. is reproduced as under :-

"304. Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

In the present case, joy ride of four friends converted into a tragic ride, wherein one friend died. Applicant and other co-accused appears to be negligent as they, despite being adult boys, have not discharged their duty to help injured friend in order to provide proper medication. It is evident that when they found that their friend is dying not only they left him but ran away also and they did not inform to police or their parents. It is not on record whether deceased, applicant and co-accused wore helmet at time of accident or not.

However, there is a merit in the argument of learned counsel for applicant that above narrated facts, if are proved in trial, applicant and co-accused may be convicted only under Section 304 Part-II as prima facie evidence in regard to 'intention to cause death' is not supported prima facie by cogent evidence whereas it may be a case where they have knowledge that by their act it was likely to cause death.

The co-accused has been granted bail, though the reason may not be in terms of judgment passed by Supreme Court in **Manoj Kumar Khokhar vs. State of Rajasthan and Anr. (2022) 3 SCC 501** and **Brijmani Devi vs. Pappu Kumar, (2022) 4 SCC 497**, however, still considering the above factors and evidence on record as well as that applicant is in jail since 01.09.2022, a case of bail is made out.

Let the applicant- **Shakti Singh** 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment or exemption from appearance on the date fixed in trial. 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.

(iii) The applicant will not misuse the liberty of bail in any manner whatsoever.

In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C., may be issued and if applicant fails to appear before the Court on the date fixed in such proclamation, then, the Trial Court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(iv) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously, preferably within a period of six months after release of applicant, if there is no other legal impediment.

(v) **In addition to above, a specific condition is also imposed that applicant shall report at the Police Station, Hauz Khas, Delhi after released on bail on 26th April, 2023 at 10.00 a.m. and SHO of Police Station, Hauz Khas will depute the applicant near AIIMS, Delhi, Gate No.1 (Aurobindo Marg) and he will have a placard, having description of 'Wear Helmet and Drive Safely' and he shall remain at the Gate for two hours i.e. from 9.00 a.m. to 11.00 a.m. for a period of 15 days from 01.05.2023 to 16.05.2023(except Sundays). During this period, he shall also distribute 15 helmets and 25 copies of Notification No. 25035/101/2014-RS of Ministry of Road Transport and Highways, dated 12.05.2015 regarding protection of Good Samaritans to the persons who enter AIIMS, Delhi without wearing a helmet.**

Learned A.G.A. is directed to take a report of compliance of above conditions with photographs from Police Station, Hauz Khas, Delhi and will submit it before this Court. This case be listed before this Court after one month only for the purpose of perusal of above referred report.

The S.H.O., Police Station- Hauz Khas, New Delhi shall also send a report to Registrar (Compliance), Allahabad High Court, Allahabad before next date.

The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

The bail application is **allowed**.

Registrar(Compliance) to take steps to send a copy of the order to SHO, Hauz Khas, Delhi.

Put up this case with compliance report on **23.05.2023** before this Court.

Order Date :- 12.4.2023

P. Pandey