
(2006) 05 AHC CK 0099

In the Allahabad High Court

Case No : Criminal Miscellaneous Bail Application No. 3775 of 2006

Raj Kumar Sharma @ Raju (In Jail)

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2006) 05 AHC CK 0099

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Dharmendra Singhal, for the Appellant; Kamlesh Shukla and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—This bail application has been filed by the applicant Raj Kumar Sharma alias Raju with a prayer that he may be released on bail in case crime No. 241 of 2005, under Sections 302 I.P.C., P.S. Babugarh, district Ghaziabad.

2. The prosecution story, in brief, is that in the present case the F.I.R. of this case has been lodged by one Ram Kishor Sharma at P.S. Babugarh, district Ghaziabad on 29.11.2005 at 6.25 p.m. in respect of the incident which had occurred on 22.11.2005 at about 9.00 p.m. The F.I.R. was lodged against the applicant and co-accused Meenaxi Sharma alias Mahesh Sharma. It is alleged that the deceased Nootan alias Sarla was married with the applicant about 14 or 15 years ago. The deceased was mother of 4 children. She was living along with her children in a rented house. The applicant had developed illicit relations with co-accused Meenaxi Sharma alias Mahesh Sharma w/o Umesh Kumar Sharma. The deceased was making objection, therefore, the applicant was usually beating her. The applicant was persuaded not to beat her, but he was not agreed. On 22.11.2005 at about 9.00 p.m. the applicant and co-accused Meenaxi Sharma alias Mahesh Sharma committed the murder of the deceased by way of throttling

her neck and administering the poison. The first informant got a telephonic information from his younger brother in respect of the murder of the deceased. On that information the first informant and others reached at the place of the occurrence in the morning of 23.11.2005. The information was given to the police, the inquest was prepared and the post mortem was conducted. According to post mortem examination report dated 24.11.2005 the cause of death was throttling yet viscera was preserved. Thereafter, the F.I.R. was lodged by the first informant.

3. Heard Sri Dharmendra Singhal learned Counsel for the applicant, learned A.G.A. and Sri Kamlesh Shukla learned Counsel for the complainant.

4. It is contended by the learned Counsel for the applicant that: -

(i) in the present case the F.I.R. is too much delayed. It was lodged on 29.11.2005 whereas the first informant reached at the place of occurrence in the morning of 23.11.2005. There is no plausible explanation of delay in lodging the F.I.R.

(ii) The family members of the deceased were informed. On that information the first informant and his cousin Dinesh Chandra Sharma came at the place of occurrence on 23.11.2005. Dinesh Chandra Sharma gave an information to police on 23.11.2005 on 12.15 p.m. mentioning therein that the deceased had taken the poison at about 8.00 p.m. on 22.11.2005. Consequently, she died, but considering the future of her children he has made compromise with the applicant and he did not go to proceed further against the applicant. On that report inquest report was prepared. The brother of the deceased, namely Ashok and Raghunandan are the witnesses of the inquest. In the inquest report also it has been clearly mentioned that the deceased had committed suicide by taking poison. No allegation was made against the applicant. Thereafter, the post mortem report was conducted and cremation was done, but after thought the present F.I.R. has been lodged.

(iii) There is no direct or circumstantial evidence against the applicant. The applicant has been falsely implicated on the basis of doubt and suspicion with the allegation that the applicant was having illicit relation with co-accused Meenaxi Sharma alias Mahesh Sharma.

(iv) There is no independent witness of locality to support the prosecution story, but after 13 days of the alleged occurrence some interested witnesses were examined.

(v) The deceased was living separately. She was having no concern with the applicant.

(vi) Co-accused Smt Meenaxi Sharma alias Mahesh Sharma has been released on bail by this Court on 24.1.2006 in Criminal Misc Bail Application No. 358 of 2006. The applicant is also entitled to get the benefit of parity.

(vii) The applicant is innocent. He has not committed the alleged offence, but he has been falsely implicated in the present case due to doubt and suspicion. The applicant is having no criminal antecedents, therefore, he may be released on bail.

5. It is opposed by the learned A.G.A. and the learned Counsel for the complainant by submitting that the applicant is the husband of the deceased. After committing the murder of the deceased he gave an impression to the first informant and his other family members that she committed suicide by taking poison, relying upon the applicant Dinesh Chandra Sharma lodged the F.I.R. narrating the same version. The applicant and his family members were trying to persuade for compromise, according to post mortem examination report it was found that the deceased did not commit suicide, she was murdered by throttling. Thereafter, the reality came forward, then the detailed F.I.R. lodged on 29.11.2005. There is no explanation given by the applicant about the cause of death. The applicant was also living along with the deceased and he was having strong motive to commit the murder of the deceased because she was creating hurdle in relationship between the applicant and co-accused Smt Meenaxi Sharma and objecting for having illicit relation with the co-accused. There is evidence of eye witnesses namely Naresh Chaudhary, his wife Asha, Lalit, Suresh Pal, Santveer, Panna Lal and Kunwar Pal. It is wrong to say that there was no eye witness account or circumstantial evidence. The witnesses have fully supported the prosecution story. The accused Meenaxi Sharma is a woman and she was not living in the same house where the deceased was murdered. Her case is distinguishable with the case of the applicant, therefore, the applicant may not be released on bail.

6. Considering the submissions made by the learned Counsel for the parties, the facts that the applicant is the husband of the deceased, the cause of death was throttling and the witness saw the incident, I am of the view that the case is of serious nature and its gravity is too much and without expressing any opinion on the merits of the case the applicant is not entitled for bail, therefore, the prayer for bail is refused.

7. Accordingly, the bail application is rejected.