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(2011) 3 ACR 2980

Allahabad High Court

Case No: Criminal Miscellaneous Bail Application No. 18284 of 2011

Parvej APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision: Aug. 2, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 306

Citation: (2011) 3 ACR 2980

Hon'ble Judges: Ravindra Singh, J

Bench: Single Bench

Judgement

Ravindra Singh, J.
This Crl. misc. bail application has been moved by the applicant Parvej with a prayer that he may be released on bail in Case Crime No. 1947 of 2009, u/s 302, I.P.C., P.S. Kotwali Nagar, district Muzaffar Nagar.

2. Heard Sri Satish Trivedi, senior advocate, assisted by Sri Ajay Kumar Pandey, learned counsel for the applicant, learned A.G.A. for the State and Sri V. M. Zaidi, senior advocate, assisted by Sri S. M. G. Asgar, learned counsel for the complainant and perused the record.

3. The facts of the case, in brief, are that the F.I.R. has been lodged by Waseem at P.S. Kotwali Nagar on 29.10.2009 at 10.30 p.m. in respect of the incident allegedly occurred on 24.10.2009. The applicant and other co-accused are named in the F.I.R. It is alleged that after administering poison the deceased has been killed by her in-laws. The applicant is the husband of the deceased. The marriage of the deceased was solemnized about nine years prior the alleged incident. The in-laws of the deceased were demanding Rs. five lacs and to fulfil the demand, they were torturing the deceased. According to the post-mortem examination report, the deceased had not sustained any ante-mortem injury, hence the viscera was preserved. In viscera report, Organo Chloro insecticide poison was found. The applicant applied for bail before learned Sessions Judge, Muzaffar Nagar,

who rejected the same on 22.2.2011. It is contended by learned counsel for the applicant that the marriage of the deceased was solemnized about nine years prior, the alleged incident. According to the F.I.R., there is no specific allegation against the applicant and co-accused that they administered poison. This allegation has been made only on the basis of doubt and suspicion. In support of this allegation, no statement has been recorded by the Investigating Officer. It is a case of murder, in which burden to prove the charge lies upon the prosecution. In post-mortem examination report, no ante-mortem injury was found. In this case, the F.I.R. was lodged u/s 302, I.P.C., but during investigation, the case was converted u/s 306, I.P.C. Again the death was ascertained, the section was converted u/s 302. I.P.C. and the charge-sheet has been submitted. According to the viscera report, Organo Chloro poison was found. No presumption can be drawn that the poison was administered by the applicant and other co-accused persons, it was taken by the deceased herself. The applicant is in jail since 1.11.2010. The applicant is having no any criminal antecedent and he may be released on bail.

4. In reply to the above contention it is submitted by learned A.G.A. and learned counsel for the complainant that the applicant is husband of the deceased. On account of administering the poison, the deceased had died. In viscera report, Organo Chloro poison was found. In such circumstances, the applicant may not be released on bail.

5. In the present case, Hanif Ahmad, father of the applicant has given an application to the police station on 25.1.2009 mentioning therein that the deceased was suffering from fever for the last three days. On account of her illness, she died at about 8.30 p.m. on 25.1.2009. But the parents side of the deceased was having suspicion that the poison was administered, therefore, the postmortem examination report may be done, whereas, there is. no proper evidence to show that the deceased was ill prior to her death. The inquest report in the column of the injuries, it has been clearly mentioned that some contusions were seen on the neck and near the ear. The face and hands of the deceased had become light blueness. The palms were also having blueness. It shows that there was a demand of rupees five lacs for which the deceased was subjected to kill. In such circumstances, the applicant may not be released on bail.

6. Considering the facts of the case and submissions made by learned counsel for the parties and from perusal of the record, it appears that the applicant is husband of the deceased. The deceased had died on account of consuming Organo Choloro insecticide poison, it is found in the viscera report. There was demand of rupees five lacs for which the deceased was regularly tortured. In post-mortem examination report, no ante-mortem injury was seen, but according to the inquest report, the contusions were found on the neck and near the ear. It is reflected that the poison was administered by using force. In such circumstances, the applicant is not entitled for bail, therefore, the prayer for bail is refused.

7. Accordingly, the bail application is rejected.