

Devendra Shukla vs State Of U.P. on 13 September, 2024

Author: Raj Beer Singh

Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2024:AHC:149663

Reserved

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3073 of 2024

Applicant :- Devendra Shukla

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamalakar Pal, Satish Chandra Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.
2. The present second bail application has been filed on behalf of the applicant in Case Crime No. 234 of 2020, under Section - 387, 306, 506, 120-B I.P.C. and Section - 7/7A/8/12/13 Prevention of Corruption Act, 1988, Police Station - Kabrai, District - Mahoba with the prayer to enlarge the applicant on bail.

3. The first bail application of application was rejected by this Court vide order dated 22.05.2023, which is reproduced below :-

"1. Heard Sri G.S. Chaturvedi and Sri N.I. Jafri, learned Senior Advocates, assisted by Sri Mohd. Aqueel Khan, learned counsel for the applicant, Sri I.K. Chaturvedi, learned Senior Advocate, assisted by Sri Chandra Prakash Tiwari, learned counsel for the informant and Sri Rajesh Mishra, learned AGA along with Sri Abhijit Mukherjee and Sri Abhishek Srivastava, Brief holders for the State.

2. The present bail application has been filed by the applicant in case crime No. 234 of 2020, under Sections 387, 120-B, 504, 506, 306 IPC & Section 7/7A/8/12/13 of Prevention of Corruption Act, police station Kabrai, District Mahoba with the prayer to enlarge the applicant on bail.

3. The informant, namely, Ravikant Tripathi has lodged the first information report on 11.09.2020 against Manilal Patidar, the then Superintendent of police, Mahoba, Devender Shukla (applicant), the then SHO of PS Kabrai (Mahoba), Suresh Soni, Brahmdutt and some subordinate police officials, alleging that his brother Indrakant Tripathi (hereinafter referred to 'the deceased') was partner in 'R.J.S. Crusher' and earlier he was associated with 'Maa Kali Associates' and 'I.P. Traders' and he was having the licence of sale and purchase of explosive substance. Another dealership of explosive substance was with 'Suraya Chemical' of Suresh Soni and 'Ajay Enterprises' of Brahmdutt. Said Suresh Soni and Brahmdutt were having a liaison with the then Superintendent of Police Manilal Patidar (hereinafter referred to 'the then S.P.') and they used to pay Rs. 6 lacs per month to the then S.P. In the month of June, 2020, the then S.P. made demand for illegal gratification of Rs. 6 lacs from the deceased but the deceased expressed his inability, due to which, the then S.P. along with his subordinate police officials, has threatened the deceased to implicate him in false cases and to ruin his life. In the month of June, July, 2020, the then S.P. forcibly extorted Rs. 6 lacs from the deceased but after that deceased has refused to pay any further amount. The then S.P. got the deceased threatened by Station House Officer, police station Kabrai (applicant) and above said Suresh Soni. On 03.09.2020 deceased went to the office of the then S.P. and told that his partners have already closed the business of explosive substance and he has also suffered huge losses and thus, he is unable to pay any amount. On this, the then S.P. threatened that he would get him into the jail and he would get him murdered in a manner, which would look like a suicide and that Suresh Soni, financier, is also with him. Due to continuous threats of the then S.P. and Incharge of the said police station, the deceased became perturbed. On 05.09.2020, deceased sent a letter to the Chief Minister, U.P. Government, and that a complaint was also made viral on face-book and on other means of social media. Due to these acts, the then S.P. became more hostile and he started getting the deceased threatened from his subordinate police officials, that he would be implicated in false cases and he would also be get killed. On 07.09.2020 at 12:00 noon and on 08.09.2020 at 10:00 AM, the deceased made his video viral

saying that it may be possible that he would not be alive by tomorrow (next day), as the then S.P. has threatened to kill him and he is making demand of Rs. 6 lacs per month from him and he is unable to pay the same. As this message has gone viral, the deceased started getting more threats. On 08.09.2020, the deceased informed that on 09.09.2020 at 11:00 AM, he would be organizing a press conference at 'R.J.S. Granite' and would show each and every evidence of corruption being done by the then S.P., Mahoba. After that the then S.P., Station Officer Kabrai Devendra Shukla and some of their subordinate police officials and co-accused Suresh Soni and Brahmdutt, after hatching a conspiracy, made an attempt to get the deceased killed by firing. On 08.09.2020 at 2:30 PM, the deceased was found lying in injured condition in his car no. UP95-N-2900 on Kabrai-Banda road. On the basis of information from some passers-by, the deceased was sent to government hospital, Mahoba. On information, the informant also reached there. Due to serious condition, the deceased was referred to Kanpur and there doctors told that deceased has sustained a bullet at neck and he is on ventilator. It was also alleged that due to the acts and conduct of the then S.P. and his subordinate police officials, co-accused Suresh Soni and Brahmdutt, an atmosphere of fear has prevailed in the entire area.

4. The first information report was lodged on 11.09.2020 at 19:49 hours, under Sections 387, 307, 120-B IPC and Section 7/13 of Prevention of Corruption Act at police station Kabrai, district Mahoba. Initially investigation was taken by Sri Raj Kumar Pandey, Dy. S.P. On 13.09.2020 the deceased succumbed to injuries and thus, section 302 IPC added. On 14.09.2020 an Special Investigation Team (SIT) was constituted for investigation of this case. During investigation, on the basis of Ballistic report dated 24.09.2020, the Investigating Officer has converted the case from Sections 302/307 IPC to Section 306 IPC along with sections 387/120-B/504/506 IPC and Section 7/13 of P.C. Act. It appears that during investigation, police found that deceased has committed suicide by firing bullet at himself, due to the continuous demand of illicit gratification and threats by the accused persons.

5. As per postmortem report, the cause of death of deceased is shock and septicaemia due to firearm injury. The deceased has sustained following ante-mortem injuries:-

"(i) L.W. size about 0.5 x 0.5 cm over 2.0 cm below C-7 cervical bone deep. C yellowish discharge blackening around the margins converted.

(ii) L.W. size about 3.0 x 2.0 cm over 2.5 cm above medial end of rt. Clavicle C yellowish discharge.

(iii) Injury no. 1 is commanding to injury No 2 between

-C7 and T1 vertebra.

-Muscle and trachea and esophagus lacerated laterally."

6. It has been argued by learned Senior Advocate appearing for the applicant-accused that the applicant-accused is innocent and he has been falsely implicated in this case. Applicant was working as Station House Officer of police station Kabrai and he has never demanded any bribe from deceased nor he has made any investigation against him. There is no evidence that deceased has ever paid any amount to the applicant. Referring to the facts of the matter, it was submitted that there is no evidence that applicant has abetted the deceased to commit suicide. Applicant is serving in police department since long and he has never been involved in any illegal activity. The applicant was not involved in this case in any manner. Referring to the statements of Satyam Singh, Arjun Singh and some other witnesses, it was submitted that their statements indicate involvement of one Balkrishna @ Ballu Maharaj, Mukesh Gurudev, Asharam and Parshottam, who have also removed the pistol of deceased and threatened witness Satyam Singh and Arjun Singh for not disclosing about that fact. The allegation that deceased was falsely implicated in the gambling case (crime no. 210 of 2020) at the instance of applicant, is wholly false. On 09.08.2020, Sub Inspector Suresh Singh has arrested five persons in the gambling case and that first information report was got lodged by said S.I. Suresh Singh. During investigation of that case, complicity of the deceased was revealed and thus, the Investigating Officer has issued notice to the deceased under Section 160 Cr.P.C., which was served upon him on 01.09.2020. It was further submitted that the police of police station Kabrai has submitted a report to the S.P., Mahoba, mentioning that the deceased along with five accused persons was involved in case crime no. 210 of 2020 and accordingly notice was served upon the deceased. Further, before the incident, deceased has made a statement on face-book account on 07.09.2020 and 08.09.2020, which does not show the name of applicant in the said facebook post. Applicant was neither witness nor Investigating Officer of case crime no. 210 of 2020 and thus, the allegation that applicant has got implicated the deceased in the said case is wholly baseless. Referring to the complaint dated 05.09.2020 made by the deceased to the Chief Minister, Government of U.P., it was submitted that the allegations of demanding money and extending threat were made against the then S.P. The Investigating Officer has not conducted proper investigation of the case and without getting GSR report, case was converted from Section 302 IPC to Section 306 IPC. The bullets found in the driving seat of the deceased do not match with the pistol of deceased, which shows that deceased has suffered homicidal death. In the alleged pen drive, containing statement of deceased for holding a press conference on 09.09.2020, the allegation was made against the then S.P. and not against the applicant. The applicant is a government servant and after incident, he has been placed under suspension and there is no possibility of absconding or tampering with prosecution witnesses as the charge-sheet has already been submitted.

7. It was further submitted that as per postmortem report, the deceased has sustained one lacerated wound of 0.5 x 0.5 cm below C-7 cervical bone deep, blackening around margin (inverted), one lacerated wound size 3.0 x 2.0 cm over 2 cm above medial end of right clavicle blade and the injury No.1 is communicating to injury No. 2. Though, as per the FSL report dated 18.09.2020, it is not clear as to whether the wound of entry was on the front or on the back of deceased but it was submitted that the above referred characteristics shown in postmortem report, clearly show that fire arm entry wound is on the back of neck while wound of exit is on the front side and thus it was not

possible for the deceased to fire at himself at back of his neck and therefore prima facie it is case of murder and not of suicide. It is not the case of prosecution that the deceased was murdered or that the applicant was involved in murder of deceased, rather the case of prosecution is that applicant along with co-accused persons, was involved in extortion and threatening the deceased and forcing him to pay money for the then S.P., and thereby abetted the deceased to commit suicide. Referring to these facts, it was submitted that case against applicant is that the applicant has abetted the deceased to commit suicide but as stated above, prima facie it is case of murder. Once it is found that it is case of murder, thus, no offence under Section 306 IPC is made out against the applicant.

8. Learned Senior Advocate further submitted that even considering the alleged complaint made by the deceased to the Chief Minister, face-book notes posted by the deceased and the statements of witnesses, recorded during investigation, the ingredients of offence under Section 306 IPC are not made out. The prosecution has suppressed the genesis of the incident. The FIR was not lodged for three days. The licensed pistol of deceased, used in the incident, as well as other belongings of deceased, were removed from the spot of incident. The alleged pistol was handed over by the informant to the police after 11 days of incident. During that period, the Investigating Officer did not try to search the said pistol. The informant has not clarified that how and when he came into possession of said pistol. As per FSL report, the empty cartridge (EC-1) was fired from the pistol but the bullet 7.65 mm 9 marked as EB-1) could not be matched with pistol of deceased or with pistols of accused persons seized by the police during investigation. The statement of Dipendra Singh, who was 'Muneem' of deceased, has been recorded after one month of incident and no explanation for this delay has been shown. It was submitted that there is no credible evidence to show that applicant demanded any bribe from the deceased. Referring to facts of the matter and statements of witnesses, recorded during investigation, it was submitted that whole prosecution story is surrounded with suspicion and mystery and genesis of the incident was deliberately concealed and that there is no credible evidence against the applicant. Lastly, it has been submitted that the applicant-accused is languishing in jail since 26.11.2020, and that in case, applicant-accused is enlarged on bail, the applicant-accused will not misuse the liberty of bail.

9. Per contra, learned Senior Advocate appearing for the informant has opposed the bail application and argued that there is sufficient evidence to show the involvement of the applicant in the incident. It was submitted by the learned senior Advocate that the police have not conducted investigation properly and that it is case of murder and that it was illegally converted from Section 302 IPC to Section 306 IPC. The Investigating Officer has recorded false statements of some witnesses in order to show that it is a case of suicide. After incident, the informant got the deceased admitted in the hospital. The delay in lodging the first information report took place as the informant was busy in treatment of deceased and thus, delay has been duly explained. Referring to postmortem report of deceased, it was stated that nature of injury of deceased shows that it was not possible for the deceased to cause the said injury himself by firearm and thus, it was a case of murder. In photo of the car of deceased, no mark of bullet injury has been shown in the driving seat of the car. Referring to facts of the matter, it was submitted that the deceased was repeatedly being pressurized and coerced to pay illegal gratification. It was submitted that in reply to the face-book note of deceased, the then S.P. has to call a press conference, which goes to show the magnitude of threat that was being faced by the deceased. The deceased has recorded his version showing serious apprehension

of being killed by the then S.P. The incident in question is very serious and sensational. The deceased was not involved in any mining, rather he was doing business of explosive substances and running a stone crusher and he was issued a character certificate by the office of concerned District Magistrate. In his statement, recorded, under Section 161 Cr.P.C., informant has clearly stated that when his brother (deceased) refused to fulfil the alleged demand of Rs. 6 lacs per month, the applicant along with some other police officials and co-accused persons has threatened him. In his supplementary statement, informant has stated that on 02.09.2020 applicant has called the deceased to the police station and threatened that if he did not pay the amount demanded by the then S.P., he would implicate him in so many false cases and that he would not be able to come out from the jail. In the complaint dated 05.09.2020, made by the deceased to the Chief Minister, U.P. Government, he has clearly stated that on 02.09.2020 the applicant, who was the then SHO of police station Kabrai, has threatened him that if he did not pay the amount being demanded by the then S.P., he would implicate him in false cases. In his note, which was published by the deceased on facebook, the deceased has again mentioned that when he refused to pay the amount being demanded by the then S.P., the applicant has threatened him. Similarly, in the written complaint made by the informant to the DGP, it was mentioned that the applicant has pressurized the deceased and threatened to implicate him in false cases.

10. Learned Senior counsel has referred various statements of witnesses and documents on record and submitted that there are serious allegations against applicant and that in case he is granted bail, he may threaten the witnesses and temper with the evidence and thus, he is not entitled for bail.

11. Learned Additional Government Advocate submitted that there are serious allegations against the applicant. There is evidence that applicant was engaged in the extortion racket. It was submitted that during investigation, S.I. Jitendra Kumar has made a statement that applicant was pressurizing him to implicate the name of the deceased in the above-stated gambling case. After incident, applicant has absconded and he surrendered before the court only after issuance of non-bailable warrants against him. Applicant has been dismissed from service as he was involved in illegal business of extortion money. Referring to the statements of constable Krishna Chandra Tripathi and HC Kamraj, it was submitted that applicant has illegally taken the documents from the car of deceased and tried to remove the same. After death of deceased in hospital, Section 302 IPC was added but in view of subsequent report of the Joint Director, State Medico Legal Cell, it has emerged that point of firearm entry wound is below the chin and thus, on the basis of FSL, case was converted from Section 302 IPC to Section 306 IPC. It was stated that whether the case falls under Section 302 IPC or Section 306 IPC, it may be considered by the trial court at appropriate stage.

12. Learned AGA has also referred statement of Dipendra Singh, who was working as Muneem/Clerk of deceased, he has also stated that applicant was continuously indulging in collection of illicit money from deceased and other businessmen on behalf of the then S.P., Mahoba. He has stated that an amount of Rs 100,000/ per month was being paid by the deceased to the applicant. Referring to facts of the matter and statements of witnesses, recorded during investigation, it was submitted that there are serious allegations against the applicant. The act and mischief of applicant becomes more serious because he was indulging in such activity while he was working in police.

13. I have considered the rival submissions and perused the record.

14. Before proceeding further it may be observed that in case of State through C.B.I vs. Amaramani Tripathi? [(2005) 8 SCC 21], the Apex Court held that a Court granting bail to an accused, must apply its mind and go into the merits and evidence on record and determine whether a prima-facie case was established against the accused. It was held that the seriousness and gravity of the crime was also a relevant consideration. The Hon'ble Apex Court has, in a catena of judgments, outlined the considerations on the basis of which discretion under Section 439 CrPC has to be exercised while granting bail. In landmark judgment of Gurcharan Singh v. State (Delhi Administration) (1978) 1 SCC 118, the Apex Court has laid down various parameters which must be considered while granting bail. The Court held as follows:

"24. ?Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1)CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1)CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

15. It was held that the above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter-alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused.

16. It is also to be kept in view that at the stage of granting bail, the Court is not required to enter into a detailed analysis of the evidence in the case. Such an exercise may be undertaken at the stage of trial. In case of Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Court held as under:

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

XXX XXX XXX

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal?.."..

17. In *Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118, the court followed the observations made in *Prasanta Kumar Sarkar* (supra) and held as follows:

"17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a nonapplication of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment?"

18. A three Judges' Bench of the Apex Court in *Jagjeet Singh & Ors. V. Ashish Mishra @ Monu & Anr.* in Criminal Appeal No. 632 of 2022, has reiterated the factors that the Court must consider at the time of granting bail under Section 439 CrPC, as well as highlighted the circumstances where this Court may interfere when bail has been granted in violation of the requirements under the above-mentioned section. The Court observed as follows:

"28. We may, at the outset, clarify that power to grant bail under Section 439 of CrPC, is one of wide amplitude. A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail. But, as

has been held by this Court on multiple occasions, this discretion is not unfettered. On the contrary, the High Court of the Sessions Court must grant bail after the application of a judicial mind, following well established principles, and not in a cryptic or mechanical manner."

19. In case of Kalyan Chandra Sarkar V Rajesh Ranjan alias Pappu Yadav & Anr. ? [(2004) 7 SCC 528], the Court held that although it is established that a Court considering a bail application cannot undertake a detailed examination of the evidence and make an elaborate discussion on the merits of the case, the Court is required to indicate the prima facie reasons justifying the grant of bail.

20. Keeping in view the aforesaid legal position and facts of the matter, in the instant case, it may be observed that the deceased was partner in 'R.J.S. Crusher' and he was also associated with 'Maa Kali Associates' and 'I.P. Traders', having the licence of sale and purchase of explosive substance and earlier he was paying Rs six lacs per month to the then S.P.. When the deceased has expressed his inability to pay any further amount by saying that he is no more doing the business of explosive substances, he was continuously harassed and threatened by the then S.P and by his subordinate police officials. On 05.09.2020 deceased has sent a letter to the Chief Minister, U.P. Government, and that a complaint letter was also made viral on face-book and thereafter the then S.P. increased the harassment of deceased through applicant and co-accused persons. On 07.09.2020, the deceased has posted a video saying that it may be possible that he would not be alive by tomorrow, as the then S.P. was threatening to kill him and he was demanding Rs. 6 lacs per month from him. Deceased has also told that he would organize a press conference on 09.09.2020 to show the evidence of corruption being done by the then S.P. and his subordinate police officials and other co-accused persons. On the same day i.e. 08.09.2020 at 2:30 PM, he was found in injured condition in his car and he was having bullet injuries. On 13.09.2020 the deceased succumbed to injuries. It would be interesting to note that the case of applicant as well as of the informant is that in view of nature of injuries, as discussed above, it is a case of murder and not of suicide. Be that as it may, there is sufficient evidence to show the complicity of the deceased.

21. The applicant-accused is named in the first information report. The applicant-accused was also named in the complaint, which was sent by the deceased to the Chief Minister on 05.09.2020. From statements of the informant as well as statements of other witnesses, recorded during investigation, it clearly emerges that while working as SHO of police station Kabrai (Mahoba), the applicant-accused was actively involved in the alleged extortion racket. There is evidence that applicant-accused has extended threats to the deceased that in case he did not pay an amount of Rs six lacs to the S.P./ Manilal Patidar, he would be implicated in false cases and he would face dire consequences. During investigation, witness Dipender Singh, who was working as 'muneem' / cashier of the deceased, has inter-alia stated that earlier the deceased was paying Rs 6 lacs/ per month to Superintendent of police Manilal Patidar, Rs 100,000/ per month to applicant Devender Shukla SHO of PS Kabrai and Rs 15,000/ per month to Constable Arun Kumar. He has further stated that the applicant-accused has also come at the office of firm and threatened Bablu Maharaj and Purushottam Soni, who are partners of the firm. Bablu Maharaj and Purushottam Soni have also supported the said version.

22. The informant has stated in his statement that applicant-accused has extended threats to the deceased. It was further stated by him that on 02.09.2020 applicant has called the deceased to the police station and threatened that if he did not pay the amount demanded by the then S.P., he would implicate him in so many false cases and that he would not be able to come out from the jail. In the complaint made by the deceased to the Chief Minister, Government of U.P., it was mentioned that when deceased has refused to fulfil the demand of the then S.P. to pay Rs. 6 lacs, on 02.09.2020 applicant has threatened the deceased that if he did not pay the amount, he would implicate him in false cases. Similarly in his face-book post on 07.09.2020 and 08.09.2020, the deceased has mentioned that the applicant has also threatened the deceased that if he did not pay the said amount, he would implicate him in false cases. It is apparent that applicant was actively involved in the alleged extortion racket and taking undue advantage of his position as the Station House Officer of police station Kabrai and he was continuously threatening the deceased to pay the said amount to the then S.P. It appears that a well organized racket was being run by the accused persons to extort illicit money from the deceased and various other businessmen. It may be stated that the act of the applicant-accused is quite daring, as taking advantage of his position as SHO of the police station, he was extorting money from the deceased and other businessmen involved in business of mining and explosives, by coercion and extending threats that in case the alleged amount was not paid, he would falsely implicate in criminal case. From statement of SI Jitender Kumar, it appears that he got falsely implicated the deceased in gambling case. It is quite disturbing that while working on a responsible position as SHO of the police station, the applicant was indulging in such an illegal act of corruption, extending threats and extortion of money in a clandestine manner. Considering all attending facts and circumstances of the case and also taking into consideration that such incidents shake the faith of citizens and civil society in police system, this Court is of view that such police officials do not deserve any leniency. Further, considering the position of accused-applicant and statements of witnesses, in case the applicant is released on bail, the possibility of tampering with evidence and witness can not be ruled out.

23. Considering submissions of learned counsel for the parties, nature of accusations, the role of applicant as emerged during investigation, gravity of offence, the possibility of tampering with evidence and all attending facts and circumstances of the case, the Court is of the view that accused-applicant is not entitled for bail.

24. Before parting with this order, this Court is constrained to observe that some serious irregularities have been committed in the investigation of the case. In the first information report, the then S.P. Manilal Patidar was one of the accused but the investigation of the case was entrusted to his subordinate Dy. S.P. Sri Raj Kumar Pandey. Once the S.P. himself was an accused, the investigation must have been carried out by some police officer superior to the S.P.. However, later on SIT was constituted. On 08.09.2020, the deceased was found in injured condition in his car and he was having bullet injuries and it was alleged that licensed pistol of the deceased was also lying in the car but the police did not try to seize the said pistol. The said pistol was produced by the informant after 13 days of the incident. Similarly police did not try to seize the other belongings of the deceased lying in the car. It also appears from the record that the car of the deceased, in which the deceased was found in injured condition on 08.09.2020, was not inspected by the Inspecting Officer for several days. The statement of several witnesses, including that of Dipendra Singh,

'Muneem/Cashier' of deceased, who was an important witness in view of allegations made by the informant, were recorded with considerable delay.

25. The bail application filed on behalf of applicant Devendra Shukla is hereby rejected"

4. Learned counsel for the applicant submitted that at the time of incident applicant was working as Station House Officer of Police Station ? Kabrai, Mahoba and the allegations made against applicant are wholly false. The allegation that the Superintendent of Police, Mahoba has got threatened the deceased through applicant is not based on any credible evidence. Learned counsel has pointed out the infirmities in the investigation, as referred in paragraph no.24 of the aforesaid order dated 22.05.2023. There is no evidence that the applicant has abetted the deceased to commit suicide.

5. It is further submitted that the applicant is in jail since 26.11.2020 and thus, he has already undergone detention of more than three years and nine months and that the case is still at the stage of charge. The charges are yet to be framed against applicant and thus, it is apparent that trial of the case is likely to take sufficient long time. The applicant has been charge sheeted for offence under Sections ? 387, 120-B, 306, 504, 506 I.P.C. and 7/7A/12/13 Prevention of Corruption Act and the maximum sentence for the aforesaid offences is up-to 10 years imprisonment and thus, the applicant has already undergone more than one-third of the maximum sentence prescribed and trial of the case is yet to commence. Learned counsel has referred case of Re-Inhuman Conditions in 1382 Prisoners [Writ Petition (Civil) No. 406/2013], wherein by order dated 23.08.2024, Hon'ble Apex Court has held that provisions of Section 479 BNSS -2023 shall apply to all under-trials in pending cases irrespective of whether the case was registered against them before 01.07.2024, the date when the newly minted legislation has come into effect. It was submitted that in view of aforesaid binding judgment of Hon'ble Apex Court, the applicant is entitled for bail. It was stated that applicant has no criminal history and in case he is granted bail, he would co-operate during trial.

6. Learned A.G.A. has opposed the prayer for bail and submitted that applicant was involved in the alleged incident, wherein the deceased has committed suicide due to the harassment meted out by applicant and co-accused persons. Deceased was harassed and threatened by the applicant to pay Rs. Six lakhs per month to the then S.P., namely, Manilal Patidar. The applicant was named in the first information report. There is evidence that the applicant was actively involved in the entire scenario of the incident. At the relevant time applicant was working Station House Officer of police station Kabrai and he has misused his power in order to harass the deceased. It was further submitted that first bail application of applicant has already been rejected on merits and no new ground for entertaining this second bail application is made out.

7. I have considered the rival submissions and perused the record.

8. The first bail application of applicant was rejected by this Court by a detailed order dated 22.05.2023. Mainly, the allegations against applicant are that the deceased was doing business of stone crusher of explosive substances and that applicant and co-accused persons, including Superintendent of Police, were pressurising and harassing the deceased to pay Rs. Six lakhs per month to the Superintendent of Police and consequently he committed suicide by causing gun shot injury. Before the incident, deceased has made a complaint to the Chief Minister and a video was also published. It was alleged that applicant has threatened the deceased that if he did not pay Rs. Six lakhs per month to the S.P. Manilal Patidar, he would be implicated in false cases. The applicant was working as S.H.O. of the Police Station ? Kabrai (Mahoba). The applicant is in jail since 26.11.2020 and it appears that even the charges have not been framed so far and thus, trial of the case is yet to commence, whereas the applicant has already undergone the detention of more than three years and nine months. Applicant has no criminal antecedents. Recently in above referred case of Re-Inhuman Conditions in 1382 Prisoners (supra), it has been held by Hon'ble Apex Court that provisions of Section ? 479 BNSS 2023 shall apply to all the under-trials in pending cases. Section ? 479 BNSS provides that where a person, who is first-time offender, has during period of investigation or inquiry or trial shall be released on bond by the Court, if he has undergone the detention for the period extending up to one-third of the maximum period of sentence specified for such offence under the law. In the instant matter, applicant is not a previous convict and he has already undergone more than one-third sentence of the maximum period of sentence prescribed for the offences alleged. Thus, the aforesaid authoritative pronouncement of Hon'ble Apex Court is applicable in the present case.

9. In view of aforesaid facts and above referred judgment of Hon'ble Apex Court, without expressing any opinion on the merits, a case for bail is made out. Hence, the second bail application is hereby allowed.

10. Let the applicant - Devendra Shukla involved in the aforesaid crime be released on bail on furnishing a personal bond and two local heavy sureties each of the like amount to the satisfaction of court concerned subject to the following conditions:

- i. The applicant will not tamper with the evidence during trial.
- ii. The applicant will not pressurize/intimidate the prosecution witnesses.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.
- iv. The applicant will not try to contact, threat or otherwise influence the complainant or any of the witness of the case.

11. In case of breach of any of the above condition, the trial court shall be at liberty to cancel the bail of applicant in accordance with law.

Order Date :- 13.9.2024 S Rawat