

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8430 of 2023

Applicant :- Pradeep Rajpoot

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Kishor Gupta, Seema Shukla, Shiv Shankar Gupta, Vinod Kumar Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Vinod Kumar Ojha, learned counsel for the applicant, Sri Bade Lal Bind, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Pradeep Rajpoot, seeking enlargement on bail during trial in connection with Case Crime No.312 of 2022, under Sections 498-A, 304-B IPC, and 3/4 Dowry Prohibition Act, registered at Police Station Charkhari, District Mahoba.
4. The FIR of the matter was lodged on 16.10.2022 by Pran Singh against the applicant and four other persons on the basis of an application under Section 156(3) Cr.P.C. dated 8.8.2022 alleging therein that his daughter Raman Devi was married to the applicant on 3.9.2016. He spent money as per his status in the marriage. After marriage the accused persons were demanding dowry and there was a demand of Rs.2 lakh from his daughter by them. They used to torture her. In the meantime she gave birth to a boy. On 12.12.2021 at about 2-3 p.m. he received an information from the in-laws of his daughter that his daughter has consumed Salphas and died. He immediately went to the district hospital after which the last rites of his daughter was performed. He gave an application to the police but the police stated that the viscera report is awaited and action will be taken after it. Subsequently he approached to police station repeated times but police refused to lodge FIR. Then on 4.8.2022 he gave an application to the Superintendent of Police and D.I.G. Banda but no action was taken. He then moved an application under Section 156(3) Cr.P.C.
5. Learned counsel for the applicant argued that although the applicant is the husband of the deceased but has been falsely implicated in the present case. It is argued that the incident of the matter is dated 12.12.2021 in which the wife of the applicant died. It is argued that the inquest of the deceased was conducted on 13.12.2021 on an information received at the police control room. The deceased was brought to the hospital in dead condition. Pran Singh, the first informant and

Pushpendra Singh, the son of the first informant were witnesses in the inquest at serial nos.2 and 3. There was no complaint or any objection made by the said two persons to the police or authorities regarding any such incident at that time. The postmortem of the deceased was conducted after which as per the statement of the informant himself the dead-body of the deceased was brought to the village of the applicant subsequent to which she was cremated. Then an application under Section 156(3) Cr.P.C. dated 8.8.2022 was moved which is after a delay of about more than eight months. There is no plausible explanation regarding inordinate delay in moving the application under Section 156(3) Cr.P.C. More so when the first informant and his son were the witnesses in the inquest, they did not make any complaint whatsoever. The viscera report dated 8.10.2022 opined Aluminum Phosphide present which is after moving of the application under Section 156(3) Cr.P.C. It is argued that looking to the inordinate delay and presence of the witnesses during inquest and cremation coupled with the fact that the deceased was not found to have received any bodily injury and the cause of death could not be ascertained and viscera was preserved. The implication of the applicant is with malafide intention. It has also been pointed out that the applicant is not having any criminal history as stated in para 32 of the affidavit. The applicant is in jail since 30.12.2022.

6. Per contra learned counsel for the State opposed the prayer for bail and argued that the applicant is the husband of the deceased who is named in the FIR and there are allegations against him, as such the prayer for bail be rejected.

7. After hearing the counsel for the parties and perusing the record, it is evident that the incident of the present case is dated 12.12.2021. The inquest of the deceased was conducted on 13.12.2021 in which the first informant and his son were witnesses with three other persons and at that time there was no complaint or objection whatsoever made by them regarding the death being unnatural. The viscera was preserved and the viscera report states that Aluminum Phosphide was found in it. An application under Section 156(3) Cr.P.C. was moved on 8.8.2022 which is after about eight months of the alleged incident. There is inordinate delay in moving the application under Section 156(3) Cr.P.C.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant-**Pradeep Rajpoot**, 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 will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. 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.

(iv) 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.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. 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.

11. The bail application is **allowed**.

(Samit Gopal, J.)

Order Date :- 21.11.2023
Gaurav Kuls