

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12617 of 2023

Applicant :- Anoop @ Ram Anoop Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Yadav, Prem Shankar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Prem Shankar, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Anoop @ Ram Anoop Sharma, seeking enlargement on bail during trial in connection with Case Crime No.40 of 2021 under Sections 498A, 304-B IPC and Section 3/4 of Dowry Prohibition Act, Police Station-Bansgaon, District-Gorakhpur.
4. This is a second bail application. The first bail application of the applicant was rejected vide order dated 16.11.2021 passed by this Court in Criminal Misc. Bail Application No. 33265 of 2021 (Anoop @ Ram Anoop Sharma vs. State of UP).
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the applicant was in Begaluru at the place of his employment on the date and at the time of incident after which he took a flight and came back after getting the information about the occurrence. It is further argued that the trial in the present matter has started in which the first informant, namely, Nand Lal Sharma was examined as PW-1 and Smt.Nirmala Devi, mother of the deceased, was examined as PW-2, who have not supported the prosecution case. It is next argued that looking to the said statements, the implication of the applicant in the present case is false.
6. *Per contra*, learned counsel for the State vehemently opposed the prayer for bail and argued that the first bail application of the applicant was rejected on merit by a detailed order. It is further argued that insofar as the alibi of the applicant is

concerned, the same has already been considered while deciding the first bail application. It is argued that the looking to the specific nature of the injury, it cannot be said that the deceased committed suicide as the same is not consistent with it. It is argued that since the trial is going on and insofar as the alibi is concerned, the applicant has to prove it at the appropriate stage in the trial.

7. After hearing the counsel for the parties and perusing the record, it is apparent that this is the second bail application moved on the behalf of the applicant. The first bail application of the applicant was rejected on merit by this Court vide order dated 16.11.2021 passed in Criminal Misc. Bail Application No.33265 of 2021, which reads as follows:-

"Heard Sri Arvind Kumar Mishra, learned counsel for the applicant and Sri Ankit Srivastava, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Anoop @ Ram Anoop Sharma, seeking enlargement on bail during trial in connection with Case Crime No. 40 of 2021, under Section 498-A, 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act, registered at Police Station Bansgaon, District Gorakhpur.

Learned counsel for the applicant argued that although the applicant is the husband of the deceased but he has been falsely implicated in the present case. It is argued that the deceased committed suicide by hanging herself. It is further argued that the applicant was not present at the place of occurrence and was in Bangalore at the time and date of the incident at his place of employment after which he took a flight and came to his house on getting information about the incident. Paragraph 12 of the affidavit is placed and Annexure-6 being the air ticket is placed to buttress the said argument. It is argued that the lodging of the first information report is delayed and there is no explanation given by the prosecution about the delay in lodging of the same. The allegation against the applicant in so far as demand of dowry is concerned is totally vague and baseless. The applicant has no criminal history as stated in para 21 and is in jail since 06.02.2021.

Per contra, learned counsel for the State vehemently opposed the prayer for bail and argued that the applicant is the husband of the deceased. The marriage of the deceased with the applicant was solemnized on 30.11.2019 and her death is on 03.02.2021 which is after 15 months of marriage. It is argued that the postmortem examination report does not in any manner show that the deceased died by committing suicide. The doctor conducting the postmortem examination found linear abrasion on the neck of the deceased and the hyoid bone was found fractured and the cause of death was opined as asphyxia due to antemortem injury. It is argued that the applicant is the husband of the deceased and there is no plausible explanation coming from his side regarding the reason for the death of his wife. The deceased died in her matrimonial house within 02 years of marriage which is unnatural.

After having heard the learned counsel for the parties and perusing the record, it is evident that the applicant is the husband of the deceased. There are allegations against him in the first information report along with other accused persons. The postmortem examination report shows a linear abrasion present on the neck of the deceased with fracture of the hyoid bone. In so far as alibi is concerned, the same is to be proved in trial.

Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is rejected."

8. It is evident that the applicant is the husband of the deceased. Insofar as the question of alibi is concerned, the same has already been considered while deciding the first bail application and as far as two witnesses turning hostile is concerned, the same is for the trial court to look into at the appropriate stage.

9. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is **rejected**.

(Samit Gopal, J.)

Order Date :- 26.10.2023

LN Tripathi