

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23396 of 2021

Applicant :- Yogesh Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shivam Shukla, Anand Pati

Tiwari, Kamlesh Kumar Tripathi, Sadhna Upadhyaya, Samriddhi Upadhyaya, Sant Sharan Upadhyay, Shamsad Ahmad

Counsel for Opposite Party :- G.A., Avijit Saxena

Hon'ble Rajeev Misra, J.

1. Heard Miss Samriddhi Upadhyaya, Advocate, along with Mr. Shivam Shukla, the learned counsel for applicant, the learned A.G.A. for State and Mr. Avijit Saxena, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Yogesh Singh seeking his enlargement on bail in Case Crime No. 390 of 2020, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Phanphud, District-Auraiya during the pendency of trial.

4. Record shows that marriage of applicant-Yogesh Singh was solemnized with Rubi Rathore in the year, 2016. However, after expiry of a period of approximately 4 years from the date of marriage of applicant, an unfortunate incident occurred on 25.11.2020 in which, the wife of applicant namely Rubi Rathore died.

5. Subsequent to aforesaid occurrence, first informant namely-Sukhveer Singh (father of the deceased) lodged a delayed FIR dated 26.11.2020 which was registered as Case Crime No. 390 of 2020, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Phanphud, District-Auraiya. In the aforesaid FIR, 3 persons namely - (1) Yogesh Singh (applicant herein), (2) Ankita and (3) Mother of Ankita have been nominated as named accused.

6. After above-mentioned FIR was lodged, Investigating Officer

proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The inquest (Panchayatnama) of the body of deceased was conducted on 26.11.2020. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as suicidal and the cause of death was specified as hanging. Thereafter, the post mortem of the body of deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased, opined that the cause of death of deceased is Asphyxia as a result of ante-mortem strangulation. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Contusion of size 4 cm x 3 cm present on lateral aspect of Rt. Arm.

2. Contusion of size 3 cm x 2 cm present on posterior aspect of Rt. Forearm below Rt. Elbow joint.

3. Contusion of size 2 cm x 2 cm present on posterior aspect of Rt. Forearm 4 cm above Rt. wrist joint.

4. Contusion of size 6 cm x 4 cm present on posterior aspect of Rt. Thigh 8 cm above Rt. Knee joint.

5. Ligature mark measuring 31 cm x 1.5 cm is horizontal and continues below thyroid in neck base of mark is reddish soft subcutaneous tissue under ligature mark ecchymosed"

7. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the FIR. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of applicant alone is established in the crime in question. He, accordingly, submitted the charge sheet dated 17.02.2021 whereby applicant has been charge sheeted under Section 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act whereas the other named accused have been exculpated.

8. Learned counsel for applicant contends that though applicant is the husband of the deceased, a named and charge sheeted accused yet he is liable to be enlarged on bail.

9. It is then contended that applicant was not present at the time of occurrence but at the concerned Police Station. Only after the deceased was put to death by the first wife and the mother of the

first wife, that the applicant reached him. As such, the applicant is innocent and has been falsely implicated in the crime in question. She, therefore, contends that applicant is liable to be enlarged on bail.

10. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 29.11.2020. As such, he has undergone approximately 3 years of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, she submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

11. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Admittedly, the death of deceased has occurred within 7 years of marriage. Applicant is the husband of deceased and an inmate of the house, therefore, the burden is upon the applicant himself to not only explain the manner of occurrence but also his innocence. In the light of above, it is jointly urged by the learned A.G.A. and the learned counsel representing first informant that the explanation offered regarding the death of deceased is the disputed defence of the applicant which prima-facie cannot be considered as *Ipso facto* to be true by this Court while deciding the bail application of applicant. The same is subject to the evidence which may emerge during the pendency of trial. Up to this stage, there is nothing on record to prima-facie accept the innocence of the applicant. On the above premise, the learned A.G.A. and the learned counsel representing first informant contend that no sympathy be shown by this Court in favour of applicant.

12. When confronted with above, the learned counsel for applicant could not overcome the same.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that

the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

14. As a result, present application for bail fails and is liable to be rejected.

15. It is accordingly **rejected**.

Order Date :- 30.11.2023

Vinay