

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23035 of 2022

Applicant :- Amit Kamal Alias Sonu

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamlesh Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Kamlesh Kumar Tripathi, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This bail application has been filed by the applicant Amit Kamal Alias Sonu seeking enlargement on bail in Case Crime No. 1024 of 2021, under Sections 498A, 326, 304B, IPC and 3/4 D.P. Act, P.S. Naubasta, District Kanpur Nagar, during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 16.11.2021, a delayed F.I.R. dated 17.11.2021 was lodged by first informant Kunwar Pal (father of the deceased) and was registered as Case Crime No. 1024 of 2021, under Sections 498A, 326, 304B, IPC and 3/4 D.P. Act, P.S. Naubasta, District Kanpur Nagar. In the aforesaid F.I.R., 7 persons namely Amit (husband), Nirmala Devi (mother-in-law), Raju, Heera, Sanju, Naresh Kumar (brother-in-law) (Behnoi) and Archana (nand) of the deceased have been nominated as named accused.

After above mentioned F.I.R. was lodged, the statement of the victim (deceased) was recorded. Copy of the same is on record at page 34 of the paper book. Prosecutrix succumbed to the burn injuries sustained by her on 17.11.2023. Accordingly, the case was converted under Section 304 IPC.

Learned counsel for the applicant submits that though the applicant is the husband of the deceased a named and charge sheeted accused, inasmuch as the charge sheet has been submitted on 20.1.2022 against applicant and mother-in-law of the deceased, yet he is liable to be enlarged on bail. The mother-in-law of the deceased has already died. Attention of the Court was then invited to the dying declaration of the deceased, which is on record at page 34 of the paper book and on basis thereof he submits that the role of torching has been assigned to co-accused Nirmala Devi, i.e. mother-in-law of the deceased. Bona fide of the applicant is explicit from the document occurring at page 81 of the paper book itself. As per the said document, the applicant immediately rushed

to save the victim and he also sustained injuries on his person which is explicit from the aforesaid document.

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 18.11.2021. As such, he has undergone more than 1 year and 11 months 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, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. It is then urged 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since the applicant is the husband of the deceased a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, he could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that though the applicant is the husband of the deceased a named and charge sheeted accused, inasmuch as the charge sheet has been submitted on 20.1.2022 against applicant and mother-in-law of the deceased, yet he is liable to be enlarged on bail, inasmuch as according to the dying declaration of the deceased, the role of torching the victim has been assigned to co-accused Nirmala Devi, the mother-in-law of the deceased is already dead, bona fide of the applicant is explicit from the document occurring at page 81 of the paper book itself, as per the said document, the applicant immediately rushed to save the victim and he also sustained injuries on his person as is explicit from the aforementioned document, clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173 (2) Cr. P. C. has already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, the judgement of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373, (Paragraph 5)**, therefore, irrespective of

the objections raised by the learned A.G.A. in opposition to the application for bail, but without making any comments on the merits of the case, the applicant has made out a case for bail.

Accordingly, the bail application is **allowed**.

Let the applicant **Amit Kamal alias Sonu** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with two heavy 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 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.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) 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.

(iv) 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.

(v) The trial court may make all possible efforts/endeavour and try to conclude the trial within a period of one year after the release of the applicant.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 19.10.2023

HSM