

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20463 of 2023

Applicant :- Shariq

Opposite Party :- State of U.P.

Counsel for Applicant :- Srijan Pandey, Irfan Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Srijan Pandey, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Shariq, seeking his enlargement on bail in Case Crime No. 280 of 2020, under Sections 498-A, 304-B, 328 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kairana, District-Shamli during the pendency of trial.

4. The first bail application of applicant-Shariq was rejected by this Court by a detailed order dated 17.02.2022 passed in Criminal Misc. Bail Application No. 42878 of 2021 (Shariq Vs. State of U.P.). For ready reference, the order dated 17.02.2022 is reproduced hereinunder:-

"Heard Mr. Chandra Bhushan Prasad, learned counsel for applicant, learned A.G.A. for State and Mr. Shivesh Mishra, learned counsel for informant.

Perused the record.

This application for bail has been filed by applicant Abdul Hakim, seeking his enlargement on bail in Case Crime No. 280 of 2020, under sections 498A, 304B, 328 IPC and Section 3/4 D.P. Act, Police Station Kairana, District Shamli, during pendency of trial.

Record shows that marriage of Shariq (applicant herein) son of co-accused Abdul Hakim was solemnized with Asma on 29.10.2017 in accordance with Muslim Rites and Customs. From the aforesaid wedlock, a male child was born. Unfortunately, just after the expiry of a period of two years from the date of marriage, an unfortunate incident occurred on 18.6.2020 in which the wife of applicant consumed some poisonous substance. According to

applicant, on the same day i.e. 18.6.2020, parents of Asma took their daughter to her parental home. Unfortunately, victim succumbed to death at her parental home. Ultimately, dead body of deceased was buried on 19.6.2020. According to applicant, husband and other in-laws participated in last rite of deceased Asma.

After expiry of a period of three weeks from the date of burial of deceased, an application dated 9.7.2020 was filed by Shabeer father of deceased under section 156 (3) Cr.P.C. Aforesaid application came to be allowed by concerned Magistrate. Resultantly a belated F.I.R. dated 23.7.2020 was registered as Case Crime No. 280 of 2020, under sections 498A, 304B, 328 IPC and Section 3/4 D.P. Act, Police Station Kairana, District Shamli. In the aforesaid F.I.R. four persons namely Shariq (husband), Salim (Jeth), Aalim (Jeth), Abdul Haqem (father-in-law) have been nominated as named accused.

Subsequent to the aforesaid F.I.R. dated 23.7.2020, body of deceased was exhumed . Thereafter the inquest of the body of the deceased was conducted on 22.10.2020. In the opinion of panch witness, the nature of death of deceased was suicidal. Subsequent of above, post-mortem of the body of deceased was conducted on 25.10.2020. In the opinion of autopsy surgeon, the exact cause of death of deceased could not ascertained and therefore, the viscera of deceased was preserved. However, no external or internal injury was found on the body of deceased. Ultimately, Chief Chemical Analyst submitted viscera report dated 3.3.2021 in which it has been stated that a foreign chemical compound namely, Aluminium Phosphorous Insecticide was found in the samples of the body of the deceased. Investigating Officer upon completion of statutory investigation of aforesaid case crime number, has ultimately submitted charge sheet dated 4.6.2021, whereby all the named accused have been charge sheeted.

Learned counsel for applicant contends that though applicant is husband of deceased but he is innocent. Applicant has been falsely implicated in above mentioned case crime number. He then submits that there is delay in lodging F.I.R. inasmuch as the deceased had died on 19.6.2020 at her parental home whereas application under section 156 (3) Cr.P.C. was filed on 9.7.2020. However, no explanation regarding the same has been given in application. Since delay/laches in filing application under section 156 (3) Cr.P.C. have not been explained, therefore, by virtue of judgement of Supreme Court in P. Rajagopal Vs. State of Tamilnadu, AIR 2019 SC 2866, present criminal proceedings cannot be sustained. It is then contended that applicant is a man of clean antecedent inasmuch as he has no criminal history to his credit except to present one. Applicant is in jail since 26.5.2021. As such, he has undergone more than eight months of incarceration.

Learned counsel for applicant then contends that from the wedlock of applicant and deceased, a male child was born just before three months of the alleged occurrence took place. He further submits that the young boy is under the care and protection of grand parents. On the aforesaid premise, learned counsel for applicant contends that applicant could not have taken any such act which could have destroyed his marriage. Only general and omnibus allegations have been made against the applicant regarding

demand of dowry only to give colour to the first information report. On the cumulative strength of above, it is urged that applicant is liable to be enlarged on bail.

Per contra, the learned A.G.A. and learned counsel for first informant have opposed the prayer for bail. Learned counsel for first informant has invited the attention of Court to the statement of first informant as recorded under section 161 Cr.P.C. and on basis thereof he contends that there was a continuous and also immediately before the occurrence demand of dowry. He has further stressed upon statement of first informant as recorded under section 164 Cr.P.C. and on basis thereof he contends that it is explicitly established that just before the birth of child there was persistent demand of dowry. As such, applicant is not liable to be enlarged on bail.

Having heard learned counsel for applicant, learned A.G.A. for State, Mr. Shivesh Mishra, learned counsel for first informant and upon perusal of material brought on record as well as the complicity of applicant and accusations made, I do not find any good ground to enlarge the applicant on bail.

The bail application fails and is liable to be rejected.

It is accordingly rejected.

Order Date :- 17.2.2022"

5. Present repeat application for bail came up for orders on 26.10.2023 and this Court passed the following order:-

"Heard Mr. Srijan Pandey, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

Learned A.G.A. has filed counter affidavit in Court today which is taken on record.

Learned counsel for applicant submits that first bail application of applicant was rejected by this Court vide order 17.2.2022. However, inspite of the fact that a period of more than one year and seven months is about to roll by from the date of order dated 17.2.2022, yet not even a single prosecution witness has been examined.

In view of above, let the Court below submit a report with regard to date of submission of charge sheet, the cognizance taking order, the date of committal, framing of charge order and whether any prosecution witness has deposed before Court below.

The necessary report shall be submitted by Court below before this Court on 9.11.2023.

Matter shall re-appear as unlisted on 16.11.2023 in the supplementary list.

Order Date :- 26.10.2023"

6. Subsequent to above order dated 26.10.2023, court concerned has submitted its report dated 09.11.2023. As per the said report, the charge sheet dated 04.06.2021 was submitted upon which, cognizance was taken by the concerned Magistrate on 12.07.2021. Thereafter, the case was committed to the court of Sessions vide connected order dated 13.04.2022. Ultimately, charges were framed against applicant vide framing of charge order dated 07.06.2022. However, first informant i.e. PW-1 appeared before court below on 09.11.2023 i.e. after 1 year and 4 months from the date of framing of charge order dated 07.06.2022, as such, the first informant has not been diligent in pursuing the trial. On the said date, his examination in chief was recorded. It is thus apparent that first informant has appeared before court below after expiry of a period of 1 year and 5 months from the date of the framing of charge order.

7. Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. There is delay in the proceedings of trial. Since applicant is in custody, therefore, he cannot be held responsible for the delay in conclusion of the trial. To buttress his submission, he has referred to the judgment of the Supreme Court in **A.R. Antulay Vs. R.S. Nayak, 1992 (1) SCC 225**, wherein court has held that an accused also has the right to speedy trial. Since the delay in the proceedings of trial is clearly attributable to the first informant himself as per the facts noted above, therefore, the applicant is liable to be enlarged on bail. It is next contended by the learned counsel for applicant that the cause of death of deceased is said to be some poisonous substance consumed by the prosecutrix which was subsequently, identified as Aluminum Phosphide found in the body parts of the deceased. On the above premise, the learned counsel for applicant submits that prima-facie the death of the deceased is a suicidal death. Referring to the post mortem report of the deceased, he contends that the Autopsy Surgeon, who conducted autopsy of the body of deceased, did not find any fatal or grievous injury on the body of deceased. As such, applicant is not likely to be awarded the maximum sentence under Section 304-B IPC, in case of conviction.

8. 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 26.05.2021. As such, he has undergone more than 2 years and 5 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, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he 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.

9. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Learned A.G.A. contends that the marriage of the deceased was solemnized with the applicant on 29.10.2017. However, just after expiry of a period of two years from the date of marriage of applicant with the deceased, the wife of the applicant committed suicide at her marital home. As such, the death of the deceased is a dowry death. Since applicant is the husband of the deceased and an inmate of the house, therefore, burden is upon the applicant to not only explain the manner of occurrence but also his innocence in terms of Section 106 and 113-B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden up to this stage. The deceased was a young lady aged about 22 years, who has died in unnatural circumstances. As such, no sympathy be shown by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

10. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that there is delay in the proceedings of trial, since applicant is in custody, therefore, he cannot be held responsible for the delay in the conclusion of the trial, the right to speedy trial is a fundamental right of an accused, the judgment of the Supreme Court in **A.R. Antulay (Supra)**, prima-facie the first informant is himself responsible for the delay in the conclusion of the trial inasmuch as, the first informant appeared before court below for giving his evidence after 1 year and 4 months from the date of framing of charge order, prima-facie, the death of the deceased is a suicidal death, the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case of conviction, the 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 applicant during the pendency of trial, the judgment 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 present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

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

12. Let the **applicant-Shariq**, be released on bail in the aforesaid case crime number on his 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 SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER 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/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(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 THE HIM/HER 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.

13. 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 :- 16.11.2023

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