

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29969 of 2021

Applicant :- Smt. Sandal

Opposite Party :- State of U.P.

Counsel for Applicant :- Nirendra Mohan, Manoj Kumar Singh, Shashank Dwivedi

Hon'ble Sameer Jain, J.

1. Heard Sri Manoj Kumar Singh, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 309 of 2014, under Sections 498-A, 323, 504, 506, 326, 302 IPC & 3/4 D.P. Act, Police Station- Maharajpur, District- Kanpur Nagar, during pendency of the trial in the court below.

3. FIR of the present case was lodged against applicant and her family members and according to the FIR, marriage of the daughter of the informant was performed with the son of the applicant on 01.04.2007 and after marriage, applicant and her family members tortured her for gold chain and motorcycle and on 08.09.2014, informant received an information that applicant and her other family members ablated his daughter i.e. deceased and when he arrived at the place of incident then found that his daughter was lying in burnt condition. It is further mentioned in the FIR that his daughter informed the informant that applicant and his other family members ablated her.

4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and only being mother-in-law of the deceased, she has been made accused in the present matter. He further submitted that although, there is dying declaration of the deceased recorded by Tehsildar and according to the dying declaration, applicant poured kerosene oil upon the deceased and thereafter her daughter i.e. sister-in-law of the deceased set her on fire but dying declaration of the deceased does not inspire any confidence and during investigation, sister-in-law of the deceased has been exonerated by the Investigating Officer.

5. He further submitted applicant is in jail in the present matter since 25.09.2014 i.e. for more than nine years and till date, only one prosecution witness could be examined i.e. informant of the case, therefore, it appears that without any fault of the applicant, trial of the case is moving with languid pace and there is no hope of its early disposal. He placed the reliance on the observation made by the Apex Court in case of ***Union of India Vs. K.A. Najeer (2021) 713*** that, right of speedy trial is the fundamental right of an accused and in case of its violation, bail should be granted to the accused.

6. He further submitted that applicant is lady and she is not having any previous criminal history.

7. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is the mother-in-law of the deceased and according to the dying declaration of the deceased recorded by Tehsildar, she poured kerosene oil upon her and thereafter her daughter i.e. sister-in-law of the deceased ablazed her.

8. Learned AGA further submitted that till date, as per his information, three prosecution witnesses have been examined. He further submitted that NBW are being issued against the Investigating Officer, Abdul Kalam but could not dispute the fact that during investigation, daughter of the applicant i.e. sister-in-law of the deceased, who, as per the allegation, ablazed the deceased, has been exonerated by the Investigating Officer and applicant, who is lady, is in jail in the present matter since 25.09.2014 i.e. for last more than nine years.

9. I have heard learned counsel for the parties and perused the record of the case.

10. However, from the record, it reflects that applicant is the mother-in-law of the deceased and according to the dying declaration of the deceased recorded by Tehsildar, she poured kerosene oil upon the deceased and thereafter sister-in-law of the deceased set her on fire but during investigation, surprisingly the daughter of the applicant i.e. sister-in-law of the deceased, who alleged to have set the deceased on fire, has been exonerated by the Investigating Officer.

11. Further, from the record, it also reflects that all the other accused persons, who were charge sheeted alongwith the applicant, have been released on bail and applicant, who is lady, is in jail since September, 2014 i.e. for more than nine years and till date,

only one prosecution witness could be examined i.e. informant of the case out of total 10 prosecution witness mentioned in the charge sheet and, therefore, I find force in the argument advanced by learned counsel for the applicant that trial of the case is moving with languid pace and there is no hope of its early disposal.

12. Further, from the argument advanced by learned AGA, it reflects that NBW are being issued against the Investigating Officer and, therefore, it appears that he is not turning up before the trial court and, therefore, it appears that without any fault, applicant is in jail for nine years.

13. The law is settled that right of speed trial is the fundamental right of an accused and on its violation, Court can consider the bail of the accused, however, it is also settled that there must be balance between seriousness of allegation, severity of punishment and incarceration suffered by the accused but in the present matter, applicant i.e. mother-in-law of the deceased, who is a lady and she is facing trial for the offence under Sections 498-A, 323, 504, 506, 326, 302 IPC & 3/4 D.P. Act and for the offence under Section 302 IPC, minimum punishment is life imprisonment, which can be extended upto capital punishment but genuineness of the dying declaration is still to prove and applicant is in jail for last nine years, therefore, in view of the long incarceration of the applicant, who is lady, for more than nine years, in my view, applicant is entitled to be released on bail.

14. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

15. Let the applicant- **Smt. Sandal** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

16. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

17. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 2.11.2023

KK Patel