

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24084 of 2023

Applicant :- Umesh Gaur

Opposite Party :- State of U.P.

Counsel for Applicant :- Gaurav Kakkar,Raghvendra Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1. On 25.09.2023, this Court had passed the following order:-

"Sri Gaurav Kakkar, learned counsel for the applicant submits that the applicant is the husband of the deceased. He has drawn attention of this Court to Annexure-11 to the affidavit accompanying the bail application at page-89 of the paperbook which is the statement of Mahesh Chandra Mittal recorded under Section 161 Cr.P.C. and has laid emphasis on the last four lines of the same, in which he has stated that the marriage of the applicant was solemnised with the deceased subject to condition that the house situated at Hathras would be transferred in the name of the applicant and to demonstrate the same, learned counsel has drawn attention of this Court to Annexure-13 to the affidavit accompanying the bail application, which is the gift deed executed in favour of the applicant. Learned counsel has further argued that after solemnisation of the marriage, the deceased was exerting pressure upon the applicant to live at her parental house after selling the house transferred in his name. Learned counsel further argued that pursuant to such influence and pressure put by the deceased, the applicant had entered into agreement to sell dated 30.06.2022 but the said agreement to sell was got cancelled by the applicant on 06.12.2022 due to said cancellation, the deceased got annoyed and committed suicide. Learned counsel has also argued that according to the post mortem report, there is a "V" shaped ligature mark, which also shows that the deceased had committed suicide and therefore, the applicant has been falsely implicated and therefore is entitled to be enlarged on bail.

Learned A.G.A. submits that the applicant and the deceased both are resident of District Hathras, thus there was no question of putting pressure by the deceased upon the applicant to live at her parental house. He further argued that it is very strange that conditional marriage took place between the parties and surprisingly, by chance the gift deed was executed prior to the marriage thus, the version of conditional marriage stands falsified. Learned A.G.A. further argued that so far as cancellation of the agreement to sell is concerned, it was got cancelled by the second party i.e. vendee, which is evident from the perusal of cancellation deed itself,. Therefore the argument that the deceased has committed suicide due to anger and annoyance on account of cancellation of agreement to sell cannot be believed by a man of ordinary prudence and prays for time to file objection.

Accordingly, four weeks' time is granted to learned A.G.A. to file detailed objection. One week thereafter, is granted to learned counsel for the applicant to file reply thereto.

Put up this case as fresh on 02.11.2023."

2. Perusal of the counter affidavit filed by learned A.G.A. shows that the averments as advanced by learned counsel for the applicant on 25.09.2023 though has been rebutted but has not been supported by any documentary evidence.
3. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.
4. Learned counsel for the applicant submits that apart from the arguments advanced by him on 25.09.2023, he has drawn attention of this Court to the statements of the independent witness namely, Mahesh Chand Verma, who has stated that the applicant is a Katha Vachak and that no quarrel took place between the applicant and the deceased with regard to non-fulfillment of the demand of dowry, thus no demand whatsoever in the additional form dowry was ever made by the applicant. Apart from the version of Mahesh Chandra Verma, similar averments have also been stated by independent witnesses namely, Naveen and Basant Lal. He further submits though the allegation of demand of car has been levelled against the applicant, but the status of applicant as well as informant side are not such, that they will demand dowry or the informant would fulfil the demand of car. It is thus contended that the deceased had committed suicide in a fit of rage due to non-selling of the house in question by the applicant and therefore no offence is made out against the applicant. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 23.08.2022 having no criminal history.
5. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence. In case the applicant is released on bail will misuse the liberty of bail.

6. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicant has made out a case for bail. Hence the bail application is allowed.

7. Let applicant **Umesh Gaur** involved in Case Crime No.464 of 2022 under Sections 498A, 304B, 506 I.P.C., Police Station Hathras Kotwali, District Hathras, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

I. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 of the Indian Penal Code.

III. In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 of the Indian Penal Code.

IV. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

8. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 16.11.2023

S.Ali