

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41346 of 2020

Applicant :- Abdul Gaffar

Opposite Party :- State of U.P.

Counsel for Applicant :- Dhiraj Kumar Pandey, Amit Pathak, Anil Kumar Shukla, Ashish Kumar, C.D. Mishra

Counsel for Opposite Party :- G.A., Syed Wajid Ali

Hon'ble Rajeev Misra, J.

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

2. Perused the record.

3. This application for bail has been filed by applicant-Abdul Gaffar seeking his enlargement on bail in Case Crime No. 252 of 2020, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kotwali Dehat, District-Shaharanpur during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 26.05.2020, a delayed FIR dated 17.07.2020 was lodged by first informant-Mohd. Bilal (father of the deceased) and was registered as Case Crime No. 252 of 2020, under Section 304-B IPC, Police Station-Kotwali Dehat, District-Shaharanpur. In the aforesaid FIR, 4 persons namely - (1) Ikrar, (2) Smt. Dilruba, (3) Imrana and (4) Abdul Gaffar (applicant herein) have been nominated as named accused.

5. After the occurrence giving rise to present criminal proceedings had occurred, the information regarding the same was given to the police. Thereafter, the inquest (Panchayatnama) of the body of deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as suicidal. 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 was Asphyxia as a result of ante-mortem strangulation. However,

the viscera of the deceased was preserved for chemical analysis. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Ligature mark measuring 23 x 1.5 cm around the neck, horizontal continuous in nature, base or mark seems to be soft & reddish, 05 cm below from the middle of chin & 03 cm below from Rt. angle of mandible & 2.5 cm below from left angle of mandible.

2. Tongue protruded & congested with face congested.

3. Fracture of the large & trachea found for viscera examination."

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. During course of investigation, he 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 him during the course of investigation he came to the conclusion that complicity of three of the named accused namely Abdul Gaffar (Father-in-law of the deceased), Smt. Dilruba (Mother-in-law of the deceased) and Ikrar (husband of the deceased) is established in the crime in question. He, accordingly, submitted the charge sheet dated 19.09.2020 against aforementioned named accused whereas one of the named accused namely Imrana was exculpated.

7. Learned counsel for applicant contends that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Applicant is the father-in-law of the deceased. The husband of the deceased is already languishing in jail. Applicant cannot be said to be the beneficiary of the alleged demand of dowry. It is then contended that similarly situate and circumstanced co-accused Smt. Dilruba (Mother-in-law of the deceased) has already been enlarged on bail by this Court vide order dated 26.04.2023 passed in Criminal Misc. Bail Application No. 41796 of 2020 (Smt. Dilruba Vs. State of U.P.). For ready reference, the order dated 26.04.2023 is reproduced hereinunder:-

"Supplementary affidavit filed today which is taken on record.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the entire record.

The present bail application has been filed on behalf of applicant in Case Crime No. 252 of 2020, under Sections 304B IPC and Section 3/4 D.P. Act, Police Station Kotwali Dehat, District Saharanpur, with the prayer to enlarge the applicant on bail.

It is submitted by learned counsel for applicant that applicant is innocent and has been falsely implicated in this case. It is next submitted that the applicant is mother-in-law of the deceased. As per allegation made in the FIR, the marriage of the deceased was solemnized with co-accused Ikrar on 28.11.2016, according to Muslim rites and customs without taking any dowry. The FIR was lodged on 09.06.2020 on the application under Section 156 (3) Cr.P.C. given by real brother of the deceased. As per the post-mortem report, the cause of death was due to asphyxia as a result of ante-mortam strangulation and the viscera was preserved for chemical analysis. General allegation has been levelled against the applicant for demand of dowry and cruelty. He has next submitted that the trial court has recorded statements of two prosecution witnesses i.e P.W. 1 Mohd Bilar and P.W. 2 Harun. The applicant is a lady and suffering with old age ailments. Learned coeounsel for applicant lastly submits that applicant is in jail since 21.08.2020 having no criminal history and that in case applicant is enlarged on bail, applicant will not misuse the liberty of bail.

Per contra learned A.G.A. vehemently opposed the prayer for bail but conceded that during trial two witnesses have been examined, applicant is mother-in-law of the deceased and applicant is languishing in jail since 21.08.2020.

In Union of India Vs. K.A. Najeeb (2021) 3 SCC 713, the Hon'ble Apex Court has observed that:-

"15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee v. Union of India SCC para-15 it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the Courts are tasked with deciding whether an individual ought to be released

pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

Considering the submissions made by learned counsel for applicant as well as learned A.G.A. and without expressing any opinion on the merits of the case, at this stage, prima facie, a case for bail has been made out.

The prayer for bail is granted. The application is allowed.

Let applicant, Smt. Dilruba, involved in the aforesaid crime be released on bail on furnishing a personal bond and two local sureties to the satisfaction of court concerned subject to the following conditions:

(1). The applicant will not tamper with the prosecution evidence during the trial.

(2). The applicant will not influence any witness.

(3). The applicant will appear before the trial Court on the date fixed, unless personal presence is exempted.

(4). The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

In case of breach of any of the above condition, the prosecution shall be at liberty to move an application before this Court seeking cancellation of the bail.

Order Date :- 26.4.2023"

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 21.08.2020. As such, he has undergone more than 3 years and 2 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 applicant cannot be claim parity with the order dated 26.04.2023 inasmuch as, bail was granted to the mother-in-law of the deceased. By virtue of the provisions contained in proviso to Section 437 Cr.P.C., the case of mother-in-law of the deceased is clearly distinguishable. It is then contended that marriage of the deceased was solemnized with Mohd. Ikrar (son of the applicant) on 28.11.2016 whereas the death of the deceased occurred on 26.05.2020 i.e. within 7 years of marriage. As per the medical opinion, the cause of death of the deceased is ante-mortem strangulation. By reason of above, the nature of death of deceased is a dowry death. Consequently, the applicant who is an inmate of the house and also father-in-law of deceased is under the burden to not only explain the manner of occurrence but also his innocence in terms of Sections 106 and 113B of the Evidence Act. However, up to this stage, the applicant has miserably failed to discharge the said burden. The deceased was a young lady aged about 25 years, who has died in unnatural circumstances. On the above conspectus, it is thus urged that no sympathy be shown by this Court in favour of applicant.

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

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of applicant, accusations made coupled with the fact that the death of deceased has occurred just after expiry of 4 years from the date of her marriage at her marital home, as per the medical opinion, the cause of death of deceased is ante-mortem strangulation, applicant is the father-in-law of the deceased and an inmate of the house, therefore, the burden is upon the applicant to not only explain the manner of occurrence but also is innocence in terms of Sections 106 and 113B of the Evidence Act, however, up to this stage, the applicant has miserably failed to discharge the said burden, 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.

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

13. It is accordingly **rejected**.

Order Date :- 27.10.2023

Vinay