

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35267 of 2023

Applicant :- Sushila Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhai Singh Yadav, Anuj Srivastava

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35227 of 2023

Applicant :- Jay Prakash

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhai Singh Yadav, Anuj Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Abhai Singh Yadav, the learned counsel for both the applicants, the learned A.G.A. for State and Mr. Sheshadri Trivedi, Advocate, who has put in appearance on behalf of first informant by filing his vakalatnama today in Court, which is taken on record.

Perused the record.

These applications for bail have been filed by applicants Sushila Devi and Jay Prakash seeking their enlargement on bail in Case Crime No. 121 of 2023, under Sections 498A, 304B, 323 IPC and Section 3/4 D.P. Act, Police Station- Nawabganj, District Prayagraj during the pendency of trial.

It transpires from record that marriage of applicant was solemnized with Jay Prakash on 19.10.2020. However, just after expiry of period of two years and four months and few days from the date of marriage of applicant-Jay Prakash, an unfortunate incident occurred on 18.3.2023, in which the wife of applicant died as she committed suicide by hanging herself. It is apposite to mention here that marriage of parties is second marriage, inasmuch as the applicant and deceased both are divorcee.

The information regarding aforesaid occurrence at the concerned Police Station was not given by applicants or any of his family members but by Vijay Srivastava (brother of deceased). On the said information, the inquest (panchayatnama) of the body of deceased was conducted. In the opinion of witnesses of inquest (panch witnesses) the nature of death of deceased was as suicidal. Thereafter, the post mortem of the body of the deceased was conducted on 19.3.2023. In the opinion of autopsy surgeon who conducted autopsy of the body of deceased the cause of death of deceased was asphyxia as a result of ante-mortem hanging. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"A ligature mark present all around upper part of neck except 13 cm gap on front of neck in width 1.5 cm, ligature mark 8 cm below rt. ear and 3 cm below left ear. On cut section of ligature mark, white glistening and parchment like appearance present"

After proceedings of inquest and post mortem were completed a belated F.I.R. dated 18.3.2023 was lodged by first informant Om Prakash (father of deceased) and was registered as Case Crime No. 121 of 2023, under Sections 498A, 304B, 323 IPC and Section 3/4 D.P. Act, Police Station- Nawabganj, District Prayagraj. In the aforesaid F.I.R. eight persons namely, Jaiprakash(husband), Akash(Devar), mother-in-law, Devrani, Kallan (maternal uncle), Kamla Devi (maternal aunt), Lavkush, (maternal brother), Bacha have been nominated as named accused.

Apart from the usual detail regarding the date and marriage of the deceased the F.I.R. further records that demand of Rs. 2,00,000/-, a motorcycle and a gold chain was repeatedly made by in-laws of deceased. On account of non fulfillment of additional demand of dowry, physical and mental cruelty was committed upon deceased and ultimately, she was put to death by named accused.

After registration of above mentioned F.I.R., Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Thereafter the statement of first informant and other witnesses was recorded under section 161 Cr.P.C. On the basis of above and other material collected by him during course of investigation, came to the conclusion that complicity of only two of the named accused i.e. husband and mother-in-law of deceased (applicant herein) is established in the crime in question, upto this stage. He accordingly submitted the charge sheet dated 23.5.2023, whereby aforesaid accused have been charge sheeted under section 498A, 304B, 323 IPC and

Section 3/4 D.P. Act, whereas investigation in respect of other accused is said to be pending.

Learned counsel for applicants submits that though applicants are named as well as charge sheeted accused, yet they are liable to be enlarged on bail. Applicant- Sushila Devi is mother-in-law of deceased. The applicant Sushila Devi being a lady, is entitled to the benefit of provisions contained in proviso Section 437 Cr.P.C. It is next contended that both the parties i.e. husband and wife were divorcee and marriage was solemnized in a simple way, as such, there cannot be any claim of dowry as alleged in the F.I.R.

Moreover the allegations with regard to commission of physical and mental cruelty alleged to have been committed upon deceased on account of non fulfilment of additional demand of dowry, are not only false and concocted but also vague and bald as they are devoid of material particulars. First informant in his statement under section 161 Cr.P.C. has failed to explain the same. There is nothing on record on the basis of which the alleged demand of dowry by applicant could be culled out. Reference in this regard is made to the judgement of Supreme Court in Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599 with reference to above, it is urged that the said allegations are liable to be ignored by this Court. The deceased was short tempered lady. She has taken the extreme step of committing suicide by hanging herself. Bonafide of applicant is explicit from the fact that except for ligature mark, no other ante-mortem injury was found on the body of deceased. Considering the nature of death of deceased, the applicants are not liable to be awarded the maximum sentence for the offence under section 304 B IPC.

Even otherwise, applicants are of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants are in jail since 21.3.2023. As such, they have undergone more than five months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized. However, upto this stage no such incriminating circumstance has emerged necessitating the custodial arrest of applicant. It is thus urged that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. and the learned counsel for first informant have vehemently opposed the prayer for bail. They

submit that since applicants are named as well as charge sheeted accused, therefore they do not deserve any indulgence by this Court. They further submit that the death of wife of applicant- Jay Prakash has occurred in her marital home and within seven years of marriage. As such the death of the deceased is a suicidal death. Applicants are therefore under legal obligation to not only explain the manner of occurrence but also their innocence in terms of Section 106 and 113B of the Evidence Act. However, up to this stage, applicants have miserably failed to discharge this burden. There is nothing on record to show the innocence of applicants either. As such, no sympathy be shown by this Court in favour of applicants.

Having heard the learned counsel for applicants, the learned A.G.A. for State, the learned counsel for first informant upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicants, accusations made coupled with the fact that applicant- Sushila Devi is lady and therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., prima facie the death of deceased is a suicidal death, the autopsy surgeon who conducted autopsy of the body of deceased did not find any other external or internal ante-mortem injury on the body of deceased. Except for the ligature mark, the allegation made in the F.I.R. that physical and mental cruelty was committed upon the deceased with regard to demand of dowry are vague and bald allegations being devoid of material particulars, first informant in his statement under section 161 Cr.P.C. has not explained the same, therefore by virtue of law laid down by Apex Court in the case of **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**, the same are liable to be ignored by this Court at this stage, the clean antecedents of applicant, the period of incarceration undergone, the police report under section 173 (2) has already been submitted, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet inspite 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 judgement of Supreme Court in **Sumit Subhaschandra Gangwal and another Vs. The state of maharashtra and Another, 2023 Live law (SC) 373**, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail, but without making any comment on the merits of the case, applicants have made out a case for bail.

Accordingly, the bail applications are **Allowed**.

Let the applicants **Sushila Devi** and **Jay Prakash**, be released on bail in the aforesaid case crime number on their 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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 :- 18.10.2023/Arshad