

Neutral Citation No. - 2023:AHC:226956

Reserved on 23.11.2023

Delivered on 30.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42096 of 2022

Applicant :- Ummed Singh And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Brijesh Kumar Mishra, Vishvendra Singh

Counsel for Opposite Party :- G.A., Rajesh Kumar Singh

Hon'ble Siddharth, J.

Heard Sri Vijay Bahadur Shivhare, learned counsel for the applicants, Sri Rajesh Kumar Singh learned counsel for the informant and learned A.G.A. for the State.

There are allegations against the applicants of causing dowry death of their daughter-in-law.

Learned counsel for the applicants submits that the alleged incident took place on 02.04.2022 and the first information report was lodged on the same day. The deceased committed suicide by way of burning and she was not done to death by way of burning. He has referred to the dying declaration of the deceased recorded by the investigating officer, which proves that during the passing of a wedding procession an iron rod was thrown up by a boy which resulted into breaking of electricity wire which fall on the deceased and she died on account of burning by electricity wire. He has submitted that it is a case of accidental death. Applicants have been falsely implicated in this case. They are in jail since 03.04.2022.

Learned counsel for the informant has vehemently opposed the bail application. He has submitted that it is a case where the deceased was burned to death inside her house as clear from statements of independent witnesses namely, Smt. Rekha and Smt. Usha, brought on recorded by way of supplementary affidavit by the applicants. In the statement of the aforesaid witnesses they have stated that it was first day of *Nav Durga*. The deceased and her mother-in-law (applicant no.2) had come back to the house after worship. Thereafter mother-in-law of deceased raised

cries that her daughter-in-law has got burnt. When they reached there they found the deceased burnt. The applicant no.1 is stated to have been present outside the house in the room. He has submitted that the applicants and their family members put the deceased on fire. The dying declaration recorded by the Investigating Officer is not genuine. In whose present it was recorded is not clear.

Learned AGA has opposed the prayer for bail but could not dispute the above submissions.

After rival submissions this court finds that the applicant no.1 was lastly not with the deceased in her room as clear from the statements of two independent witnesses filed along with the supplementary affidavit. He was sitting outside his house in the room. The mother-in-law of the deceased (applicant no.2) was with her, lastly when she caught fire or was got burned to death. Co-accused, Heera @ Lalit who is brother-in-law of the deceased, has already been enlarged on bail vide order dated 18.05.2023 in Crl. Misc. Bail Application No. 13386 of 2023. This court finds that applicant no.1 was not in the room where the deceased got burnt. It was applicant no.2. There is no explanation by applicant no.2 how the deceased died in her presence. Bail application on behalf of applicant no.1 is allowed. Bail application on behalf of **applicant no.2 (Smt. Kiran) is rejected.**

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicants; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India and recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant no.1 has made out a case for bail.

Let the applicant no.1, **Ummed Singh**, involved in Case Crime No. 147 of 2022, under Sections 498A, 304B I.P.C and 3/4 D.P. Act, Police Station Shahganj, District- Agra be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant no.1 shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant no.1 shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant no.1 shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fail 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.

(v) The applicant no.1 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 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 him in accordance with law.

In case of breach of any of the above conditions, the complainant is free to move an application for cancellation of bail before this court.

Identity and residence proof of the applicant no.1 and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 30.11.2023

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