

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47985 of 2021

Applicant :- Naveen Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Goyal, Devesh Pandey, J.P. Pandey, Rakesh Chandra Upadhyay

Counsel for Opposite Party :- G.A., Ashok Kumar Rai

Hon'ble Rajeev Misra, J.

1. Heard Mr. J.P. Pandey, the learned counsel for applicant, the learned A.G.A. for State and Mr. Aman Kumar Rai, Advocate, holding brief of Mr. Ashok Kumar Rai, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Naveen Kumar, seeking his enlargement on bail in Case Crime No. 668 of 2021, under Sections 498A, 304B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kwarsi, District-Aligarh during the pendency of trial.

4. Record shows that marriage of applicant-Naveen Kumar was solemnized with Savita on 02.12.2014. From the aforesaid wedlock, two children, a son namely Ayush and a daughter namely Iyana were born. However, just after expiry of a period of 6 years and 6 months from the date of marriage of applicant, an unfortunate incident occurred on 19.06.2021 in which, the wife of applicant died as she committed suicide by hanging herself.

5. Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused inasmuch as, the charge sheet has been submitted against applicant on 18.09.2021 yet he is liable to be enlarged on bail. The deceased was a short tempered lady and she took an extreme step of committing suicide by hanging herself. Prima-facie, the death of deceased is a suicidal death. The bona-fide of the applicant is explicit from the fact that except for the ligature mark, no other external or internal ante-mortem injury was found by the Autopsy Surgeon on the body of deceased. With reference to the FIR, the learned counsel for

applicant submits that the allegations made in the FIR with regard to demand of Rs. 25 lacs towards additional dowry and commission of physical and mental cruelty upon deceased on account of non-fulfillment of the said additional demand of dowry are vague and bald allegations inasmuch as, the same are devoid of material particulars. Attention of the Court was then invited to the statement of the first informant recorded under Section 161 Cr.P.C. wherein the first informant has not explained the manner in which, the alleged additional demand of dowry was made. With reference to the judgment of Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**, he submits that since the allegations with regard to demand of additional dowry and commission of physical and mental cruelty upon deceased for non fulfillment of demand of additional dowry are not accompanied by material particulars, therefore, the same are liable to be ignored by this Court at this stage. Considering the precarious condition of the applicant that the applicant was blessed with two children from the wedlock with the deceased, who were of tender age, it cannot be believed that the applicant shall abet in the death of his own wife. In view of the nature of death of the deceased, the applicant is not liable to be awarded the maximum sentence under Section 304B IPC.

6. 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 20.06.2021. As such, he has undergone almost 4 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.

11. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is the husband of deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The death of deceased has occurred within 7 years of her marriage at her marital home. As such, the death of the deceased is a dowry death. The applicant is the husband of deceased and inmate of the house, therefore, the burden is upon the applicant to not only explain the manner of

occurrence but also his innocence in terms of Section 106 and 113B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden up to this stage. On the above conspectus, it is thus urged that no sympathy be shown by this Court in favour of applicant. However, the learned A.G.A. and the learned counsel representing first informant could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

12. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the bona-fide of the applicant is explicit from the fact that except for the ligature mark, no other external or internal ante-mortem injury was found by the Autopsy Surgeon on the body of deceased, the allegations made in the FIR with regard to demand of Rs. 25 lacs towards additional dowry and commission of physical and mental cruelty was committed upon deceased for non-fulfillment of the said additional demand of dowry are vague and bald allegations inasmuch as, the same are devoid of material particulars, the first informant, in his statement recorded under Section 161 Cr.P.C, has not explained about the manner in which, the alleged additional demand of dowry was made, in view of above, the said allegations are liable to be ignored by this Court at this stage, in view of the law laid down by Apex Court in **Kahkashan Kausar @ Sonam (Supra)**, considering the precarious condition of the applicant that the applicant was blessed with two children from the wedlock with the deceased, who are of tender age, it cannot be believed that the applicant shall abet in the death of his own wife, in view of the nature of death of the deceased, the applicant is not liable to be awarded the maximum sentence under Section 304B IPC, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite 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 clean antecedents of applicant, the period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

13. Accordingly, the bail application is **allowed**.

14. Let the **applicant-Naveen Kumar**, be released on bail in the aforesaid case crime number on his 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.

15. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his 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

Vinay