

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36963 of 2023

Applicant :- Shivlal

Opposite Party :- State of U.P.

Counsel for Applicant :- Shravana Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Shravana Kumar Yadav, the learned counsel for applicant and the learned A.G.A.

2. Perused the Court.

3. This application for bail has been filed by applicant-Shivlal seeking his enlargement on bail in Case Crime No. 321 of 2023 under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act, Police Station-Behat, District- Saharanpur, during the pendency of trial.

4. Record shows that Marriage of Sandeep son of applicant was solemnized with Ritika @ Ritu on 22.02.2023. However, just after expiry of a period of four months from the date of marriage of the son of applicant an unfortunate incident occurred on 26.06.2023 in which the daughter-in-law of applicant namely Ritika @ Ritu died as she committed suicide by hanging herself.

5. Information regarding aforementioned occurrence at the police station concerned was not given by applicant or any of his family members but by Nishad (brother of the deceased).

6. Subsequently, the first informant Sri Lakshmidhara father of the deceased lodged a prompt F.I.R. dated 26.06.2023, which was registered as Case Crime No. 321 of 2023 under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act, Police

Station-Behat, District- Saharanpur. In the aforesaid F.I.R. three persons namely Sandeep , Premjeet and Shivilal (applicant herein) have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that marriage of daughter of first informant was solemnized with Sandeep on 22.02.2023. At the time of marriage sufficient amounts of goods and dowry were given. However, subsequently, additional demand of dowry was made. As the said demand of dowry was not fulfilled, physical and mental cruelty was committed upon the daughter of first informant. Ultimately, the daughter of first informant was put to death.

7. Thereafter, inquest (Panchnama) of the body of deceased was conducted on 26.06.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was categorized as suicidal and the cause of death was opined as hanging. Subsequent to above, post-mortem of the body of the deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of the deceased, the cause of death of deceased is asphyxia as a result of ante mortem hanging, However viscera of the deceased was preserved. The Autopsy Surgeon found following ante mortem injuries on the body of the deceased:

- 1. Abrasion 9x1 cm on front of Rt. side neck***
- ii. 14 cm above from Rt. medial end of clavicle.***
- iii. 25 cm above from Rt. mid clavicle.***
- iv. 23 cm above from Lt. mid clavicle.***

8. After aforementioned F.I.R. was lodged, the 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., who have substantially supported the F.I.R. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of two of the named accused namely Sandeep and Shivlal (applicant herein) is fully established in the crime in question. He accordingly submitted the charge-sheet dated 18.09.2023 whereby both the named accused have been charge sheeted under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act. Investigation in respect of another named accused Premjeet is said to be pending.

9. Learned counsel for applicants submits that though the applicant is father-in-law of the deceased, named as well as charge sheeted accused yet he is liable to be enlarged on bail. With reference to the material on record, he submits that the deceased was a short tempered lady and she has taken the extreme step of terminating her life by hanging herself. Bonafide of applicant is also explicit from the fact that in the opinion of Autopsy Surgeon, the cause of death of deceased is asphyxia as a result of ante mortem hanging. As such, prima facie, the death of deceased is a suicidal death. Moreover no internal or external ante-mortem injury was found on the body of the deceased by the autopsy surgeon. The same depicts the bonafide of applicant. Applicant cannot be said to be the beneficiary of the alleged demand of dowry. No abetment, instigation or conspiracy can be inferred against applicant from the record either. Allegations with regard to demand of additional dowry and commission of physical and mental cruelty upon deceased on account of non-fulfilment of additional demand of dowry are vague and bald allegation as they are devoid of material particulars. As such, the same 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 and others Vs. State of Bihar and Others, (2022) 6SCC 599.

10. Learned counsel for applicants further contends that considering the nature of death of deceased, applicant is not liable to be awarded the maximum sentence for an offence under Section 304B I.P.C. Even otherwise applicant is a man of clean antecedents inasmuch he has no criminal history to his credit except the present one. Applicant is in custody since 27.06.2023 As such, he has under-gone more than four months of incarceration. The police report (charge-sheet) 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 crystallised. Upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. He therefore contends 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 has opposed the prayer for bail. he submits that since the applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. He submits that death of deceased has occurred just after expiry of a period of four months from the date of marriage. The death of deceased is a dowry death. The deceased was a young lady aged about 21 years whose death has occurred in unnatural circumstance. By reason of above, applicant being an inmate of the house and is father in law of the deceased, is therefore, under burden to not only explain the manner of occurrence but also his innocence in terms of Section 106 and Section 113B of Evidence Act. However, applicant has miserably

failed to discharge the said burden upto this stage. On the above conspectus, the learned A.G.A. submits that no sympathy be shown by this court in favour of applicant.

12. When confronted with above the learned counsel for applicant could not over come the same.

13. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant coupled with the fact that the learned counsel for applicant could not dislodge the submissions urged by learned A.G.A. in opposition of the present application for bail, therefore irrespective of the submissions urged by learned counsel for applicant in support of present application for bail this Court, this Court does not find any sufficient or good ground to enlarge the applicant on bail.

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

15. It is accordingly **rejected**.

Order Date :- 31.10.2023

YK