

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37882 of 2023

Applicant :- Rajkumar @ Raja

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr.Rakesh Dubey, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant- Rajkumar @ Raja, seeking his enlargement on bail in Case Crime No. 246 of 2022, under Sections 498A, 304B IPC and 3/4 D.P. Act, Police Station- Juhi Southern Commissionerate, District Kanpur Nagar, during the pendency of trial.

Record shows that marriage of applicant Raj Kumar was solemnized with Arti on 27.4.2021. However, just after expiry of a period of one year and four months from the date of marriage of applicant, an unfortunate incident occurred on 17.12.2022, in which the wife of applicant is alleged to have attempted to commit suicide by hanging herself. It is the case of applicant that immediately, after the occurrence, the victim was rushed to the hospital. Unfortunately, she breathed her last on 18.12.2022.

The information regarding the death of the deceased was given by Dr. Rishi Gupta at the concerned Police Station. On the said information, the inquest of the body of deceased was conducted on 18.12.2022. In the opinion of the witnesses of inquest (panch witness) the nature of death of deceased was categorized as suicidal and the cause of death of deceased was hanging. Subsequent to above, the post mortem of the body of deceased was conducted on 19.12.2022. The autopsy surgeon who conducted autopsy of the body of deceased, opined that cause of death of deceased could not be ascertained. Accordingly, viscera of the deceased was preserved. However, the asutopsy surgeon who counducted autopsy of the body of deceased, found following

antemortem injuries on the body of deceased:

- (i) Abrasion 4 cm x 3 cm just below chin redish brown in color.
- (ii) Abrasion 1 cm x 1 cm over front of Rt Knee
- (iii) Pressure abrasion 17 cm x 1 cm over front of neck and Rt lateral part of neck upto mid of back of neck
- (iv) Distrance 5 cm below chin 6 cm below Rt ear 4 cm below occipital preminese

After above mentioned proceedings had been undertaken, a delayed F.I.R. dated 19.12.2021 came to be lodged by first first informant Sikandar (brother of deceased) and was registered as Case Crime No. 246 of 2022, 498A, 304B IPC and 3/4 D.P. Act, Police- Juhi Southern Commissionerate, District Kanpur Nagar. In the aforesaid F.I.R. three persons namely, Rajkumar @ Raja (husband), Munni (mother-in-law), Pratap (father-in-law) have been nominated as named accused.

After aforementioned FIR dated 29.11.2021 was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. He examined the first informant and other witnesses under section 161 Cr.P.C under Section 161 Cr.P.C. Witnesses so examined have supported the F.I.R. The F.S.L report dated 17.10.2023 was also submitted. In the opinion of specialist, a foreign chemical compound namely, Sankhyaia Dhatwik was found in the body parts of the prosecutrix including the samples of nails which were sent for chemical examination. On the basis of above and other material collected by Investigating Officer, during course of investigation, he came to the conclusion that complicity of only two of the named accused i.e. husband and mother in law of the prosecutrix is established in the crime in question. He, accordingly submitted the charge sheet dated 12.3.2023, whereby aforesaid named accused have been charge sheeted under sections 498A, 304B IPC and 3/4 D.P. Act, whereas investigation is said to be pending against another accused (pratap)

Learned counsel for applicant submits that though the applicant is husband of the deceased, a named as well as charge sheeted accused, yet he is liable to be enlarged on bail. The death of the deceased is a suicidal death, as is evident from the post mortem report of the deceased. The allegations made in the F.I.R. with regard to demand of dowry and commission of physical and

mental cruelty upon deceased on account of non fulfilment of additional demand of dowry are vague and bald allegations, inasmuch as they are devoid of material particulars, therefore same are liable to be ignored at this stage.

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 20.12.2022. As such, he has undergone more than ten months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, upto this stage, no such, circumstances has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is the husband of the deceased named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. He, submits that death of deceased is not suicidal death but homicidal inasmuch as a poisonous substance namely, Sankhiya Dhatwik was found in the body parts of the deceased sent for chemical examination. Learned A.G.A. submits that deceased was administered poisonous. Therefore, an attempt has been made to show that death of deceased is suicidal. Moreover the occurrence has occurred at the marital home of the deceased and after one year and four months of her marriage. It is evident from the record that occurrence took place at 10:00 pm, whereas the victim was taken to the hospital at 1: 55 am, which clearly belies the bonafide of applicant. Furthermore by reason of above, the death of deceased shall be treated as dowry death. As such, the burden is upon applicant who is the husband of the deceased and in inmate of the house to not only explain the manner of occurrence but also his innocence in terms of Section 106 and 113 B of Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. As such, no sympathy be shown by this Court in favour of applicant.

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

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence,

nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that the objections raised by learned A.G.A. in opposition to present application, could not dislodge by learned counsel for applicant with reference to the record, therefore, irrespective of the varied submissions urged by the learned counsel for applicant, 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.

In view of above, the application fails and is liable to be rejected.

It is accordingly rejected.

Order Date :- 31.10.2023

Arshad