

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38357 of 2023

Applicant :- Smt. Sumitra @ Sheela

Opposite Party :- State of U.P.

Counsel for Applicant :- Harindra Prasad

Counsel for Opposite Party :- G.A.,Arvind Kumar

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Harindra Prasad, learned counsel for the applicant, Sri Bare Lal Bind, learned AGA for the State and perused the material on record.
3. Sri Arvind Kumar, learned counsel for the first informant is not present even when the matter has been taken up in the revised list.
4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Smt. Sumitra @ Sheela, seeking enlargement on bail during trial in connection with Case Crime No. 281 of 2022, under Sections 302/34, 328 I.P.C. registered at P.S. Biwanr, District Hamirpur.
5. The F.I.R. of the matter was lodged on 05.12.2022 by Smt. Ramabai against the applicant Smt. Sumitra @ Sheela, Archana and Ved Prakash alleging therein that on 26.10.2022 at about 6-7 p.m. her son Ravinda@Mohit suddenly felling ill. She was in her maternal house. On 27.10.2022 her son Rohit was told by her daughter Rohini that Ravinda @ Mohit has been given some poisonous substance in sweetmeat by the accused persons after eating it, he has become ill. Her elder son Rohit took him in an ambulance to hospital, Hameerpur. While he was under treatment the doctor declared him dead due to poison.
6. Learned counsel for the applicant argued that the deceased was not found to have received any external injury all over his body. It is further argued that viscera was preserved which after examination was found to have contained "Organo Chloro Insecticide poison". It is argued that the First Information Report has been lodged after unexplained delay of 38 days. It is argued that the alleged incident is said to have taken place on 26.10.2022 after which the F.I.R. has been lodged on

05.12.2022. It is argued that there is no credible evidence against the applicant to show that poison was given to the deceased in sweetmeat by him and the other co-accused persons. It is argued that the F.I.R. has been lodged by the informant on hearsay information. Subsequently Kumari Rohini was interrogated who also states of poison being given to the deceased in sweetmeat by the accused persons. It is argued that silence of Kumari Rohini for about 38 days is unbelievable. It is argued that the applicant has no motive, at all, to commit the aforesaid offence and the prosecution case is silent regarding any motive being cast upon the applicant. It is argued that charge sheet in the matter has been submitted and as such there are no chances of the applicant tempering with the evidence or not co-operating in the investigation. It is argued that the applicant is a lady and is entitled to the benefit of Section 437 Cr.P.C. It is argued that the applicant has no other criminal antecedents as stated in para-20 of the affidavit and is in jail since 10.4.2023.

7. Per contra, learned State counsel opposed the prayer for bail.

8. After having heard learned counsels for the parties and perusing the record, it is evident that the applicant is a lady and is entitled to the benefit of Section 437 Cr.P.C. The F.I.R. has been lodged after an unexplained delay of about 38 days. The F.I.R. has been lodged on the information received by the informant through her son who received information about the occurrence through his sister. There is no credible evidence against the applicant. There is no eye witness of the deceased being given poison by the accused persons. Charge sheet in the matter has been submitted and as such there are no chances of the applicant tempering with the evidence or not co-operating in the investigation.

9. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

10. Let the applicant- Smt. Sumitra @ Sheela, be released on bail in the aforesaid case crime number on 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure 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 her, in accordance with law, under section 174-A I.P.C.

(V) 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 her in accordance with law and the trial court may proceed against her under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

11. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

12. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 17.10.2023

Naresh