

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38915 of 2023

Applicant :- Akhtar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Raj Pandey, Shubham Pandey

Counsel for Opposite Party :- G.A., Niraj Tripathi, Pooja Tripathi

Hon'ble Rajeev Misra, J.

Heard Mr. Ram Raj Pandey, the learned counsel for applicant, the learned A.G.A. for State and Mr. Niraj Tripathi, the learned counsel representing first informant.

Perused the record.

This application for bail has been filed by applicant Akhtar seeking his enlargement on bail in Case Crime No. 263 of 2023, under sections- 498A, 304B IPC and 3/4 D.P. Act, Police Station, Baraut, District Baghpat, during the pendency of trial.

Record shows that marriage of applicant Akhtar was solemnized with Sana three years prior to the date of occurrence. Subsequently, an unfortunate incident occurred on 7.4.2023, in which the wife of applicant died as she committed suicide by hanging herself. After aforesaid occurrence had occurred, information was received by Police.

Accordingly the inquest (panchayatnama) of the body of deceased was conducted on the said information. In the opinion of witnesses of inquest (panch witnesses) the nature of death of deceased was categorised as homicidal. However, the cause of death of deceased could not be specified.

Thereafter, an F.I.R. dated 8.4.2023 was lodged by first informant Abbas (brother of deceased) and was registered as Case Crime No. 263 of 2023, under sections- 498A, 304B IPC and 3/4 D.P. Act, Police Station, Baraut, District Baghpat. In the aforesaid F.I.R. five persons namely, Akhtar, Bano, Irfan, Afsar and Ummed have been nominated as named accused.

After aforementioned F.I.R. was lodged, Investigating officer

proceeded with statutory investigation of concerned case crime number in terms of chapter XII Cr.P.C. The post-mortem of the body of deceased was conducted. In the opinion of autopsy surgeon who conducted autopsy of the body of deceased the cause of death of deceased is asphyxia on account of hanging. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"2.2 cm x 2.5 cm sized ligature mark with leathery and pavement like feel with underlying gusting surface and adjacent micro hemorrhage with oblique direction with a length of 21.0 cm.. for left ear 5.0 from right ear and 4.0 cm from chin no outer signs of injury on the body"

During course of investigation, Investigating Officer examined the first informant and other witnesses under section 161 Cr.P.C. Witness so examined have supported the F.I.R. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of applicant is also established in the crime in question. He, accordingly submitted the charge sheet dated 8.6.2023 whereby three of the named accused namely, Bano, Irfan and mother-in-law of deceased have been charge sheeted under sections- 498A, 304B IPC and 3/4 D.P. Act.

Learned counsel for applicant submits that though the applicant is husband of deceased named as well as charge-sheeted accused, yet he is liable to be enlarged on bail. The deceased was short tempered lady. She has taken extreme step of committing suicide by hanging herself. Bonafide of applicant is explicit from the fact that the autopsy surgeon who conducted the autopsy of the body of deceased did not find any external ante-mortem injury on the body of deceased, except the ligature mark. Attention of the Court was invited to the F.I.R. and on basis thereof it is urged that allegations made in the F.I.R. with regard to demand of additional dowry are vague and bald allegations. Same are false and concocted. No other material particulars regarding the same have been mentioned in the F.I.R. Furthermore, the first informant in his statement under section 161 Cr.P.C. has failed to establish the alleged demand of dowry. He, therefore contends that the said allegations are liable to be ignored by this court, at this stage. To lend legal support to his submission, reliance is placed upon judgement of Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**. According to learned counsel for applicant, since the death of deceased is prima facie a suicidal death, therefore, the applicant is not liable to be awarded the maximum sentence provided under section 304 (B) IPC in case of

conviction.

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 12.4.2023. As such, he has undergone more than six 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 prosecution against applicants stands crystalized, inspite of above, learned A.G.A. could not point out any such circumstance from the record necessitating custodial arrest of applicant during 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 trial.

Per contra, the learned A.G.A. and the has opposed the prayer for bail. He submits that since applicant is the husband of the deceased a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. The death of deceased has occurred within seven years of marriage. In view of above, learned A.G.A. submits that burden is upon the applicant to not only explain the manner of occurrence under Section 106 but also his innocence under section 113 of the Evidence Act. However, the applicant has miserably failed to discharge the aforesaid burden up to this stage. As such, no sympathy be shown by this Court in favour of applicant. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant, with reference to the record at this stage.

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 prima facie, the death of the deceased is a suicidal death, the bonafide of applicant is explicit from the fact that no other external greivous ante-mortem injury was found on the body of deceased, except the ligature mark, since the death of deceased is a suicidal death, therefore, applicant is not liable to be awarded the maximum sentence under section 304 B IPC, the allegations made 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 balled allegations inasmuch as they are devoid of material particulars, therefore the said allegations are liable to be ignored, at this stage, the clean antecedents of applicant, the period of incarceration undergone, Police report in terms of Section 173 (2) Cr.P.C. having been submitted, therefore,

the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet inspite 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, judgement of Supreme Court in **Sumit Subhaschandra Gangwal and another Vs. The State of Maharashtra and Another, 2023 Live Law (SC) 373**, therefore, irrespective of the objection raised by the learned A.G.A. in opposition to the present application for bail, but without making any comment on the merits of the case applicant has made out a case for bail.

Accordingly the bail application is **allowed**.

Let the applicant **Akhtar**, 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 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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 :- 7.11.2023

Arshad