Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38520 of 2023

Applicant :- Munni
Opposite Party :- State of U.P.
Counsel for Applicant :- Deepak Kumar,Sonu Malik
Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Deepak Kumar, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Munni seeking her enlargement on bail in Case Crime No.173 of 2023, under Sections 498-A, 323, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Mandawar, district Bijnor, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 24.05.2023, a prompt first information report dated 24.05.2023 was lodged by first informant, namely, Munnu Singh (father of the deceased) and was registered as Case Crime No.0173 of 2023, under Sections 498-A, 323, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Mandawar, district Bijnor. In the aforesaid FIR, three persons, namely, Monu (husband); Munni (mother-in-law) applicant herein and Chhotu (Devar) of the deceased have been nominated as named accused.

Learned counsel for the applicant submits that though applicant is the mother-in-law of the deceased, a named/charge-sheeted accused inasmuch as charge-sheet has been submitted on 13.08.2023 against all the three named accused yet, she is liable to be enlarged on bail. The applicant is a lady therefore she is entitled to the benefit of provisions contained in proviso to Section 437 CrPC. The deceased was a short tampered lady and she took an extreme step to commit suicide by hanging herself. The bona fide of the applicant is further explicit from the fact that in the opinion of the autopsy surgeon the cause of death of the deceased is asphyxia as a result of ante-mortem hanging. The autopsy surgeon, who conducted autopsy of body of the deceased, did not find any other external or internal ante-mortem injury on the body of the deceased except the ligature mark. With reference to the FIR, the learned counsel for applicant submits that the allegations made in the FIR with

regard to demand of additional dowry and commission of cruelty upon the deceased on account of non-fulfillment of demand of dowry are vague and bald allegations, inasmuch as, the same have not been substantiated by material particulars. Attention of the Court was then invited to the statement of the first informant, which is at page 26 of the paper book, wherein also the first informant has not explained the said allegation with material particulars. He, therefore, contends that in view of the law laid down by the Apex Court in **Kahkashan Kausar @ Sonam & others Vs. State of Bihar (2022) 6 SCC 599**, the said allegations are liable to be ignored by this Court at this stage. Even otherwise, the applicant is the mother-in-law of the deceased and therefore she cannot be said to be the beneficiary of the alleged demand of dowry. The husband of the deceased i.e. son of the applicant is already languishing n jail.

Even otherwise, applicant is a woman of clean antecedents having no criminal history to her credit except the present one. Applicant is in custody since 26.05.2023. As such, she has undergone more than five months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant. In view of the nature of death of deceased, applicant is not liable to be awarded the maximum sentence under Section 304-B IPC. He, therefore, contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused therefore, she does not deserve any indulgence by this Court. The deceased was a young lady. The occurrence has taken place within seven years of marriage of the deceased and that too in her marital home. As such, the death of the deceased is a dowry death. Since the applicant is mother-in-law of the deceased and an inmate of the house therefore, the burden is upon the applicant to not only explain the manner of occurrence but also her innocence in terms of Sections 106 and 113-B of the Evidence Act. However, upto this stage, the applicant has miserably failed to discharge the said burden. He, therefore, contends that 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, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that applicant is the mother-in-law of the deceased, the applicant being a lady is entitled to the benefit of provisions contained in proviso to Section 437 CrPC, prima facie the death of the 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 on the body of the deceased by the autopsy surgeon, considering the nature of death of the deceased the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC, the allegations made in the FIR with regard to alleged demand of dowry and commission of cruelty upon the deceased in persuading the same are vague and bald being devoid of material particulars, no attempt has been made by the first informant to explain the same in his statement under Section 161 CrPC therefore, in view of law laid down by Apex Court in **Kahkashan Kausar @ Sonam & others (supra)**, the same are prima facie liable to be ignored by this Court at this stage, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted as such the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized, yet in spite of above the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the proceeding of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (SC) 373 (paragraph 5)**, the clean antecedents of the applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but, without making any comments on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Munni**, involved in aforesaid case crime number, be released on bail on her furnishing a personal bond with 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 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 her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under section 229-A I.P.C.

(iii) 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.

(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 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 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 :- 31.10.2023.
Rks.

Digitally signed by :-
RAJESH KUMAR SINGH
High Court of Judicature at Allahabad