

Court No. - 86

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38910 of 2023

Applicant :- Smt. Santosh Kumari

Opposite Party :- State of U.P.

Counsel for Applicant :- Manvendra Nath Singh, Vipin Gangwar

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta, J.

1. Supplementary affidavit filed by learned counsel for the applicant today in Court is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. This bail application has been filed by the applicant seeking bail in Case Crime No. 231 of 2022, under Sections 306, 406, 506, 504 and 509 IPC, Police Station Shergarh, District Bareilly.
4. Learned counsel for the applicant has submitted that the applicant is a lady and has been falsely implicated in the present case due to ulterior motive.
5. Learned counsel for the applicant has next submitted that the co-accused Tejpal has already been granted bail by this Court in Criminal Misc. Bail Application No. 8253 of 2023 vide order dated 17.03.2023.
6. Learned counsel for the applicant has next submitted that an oral agreement for sale of property situated in Kasba-Shergarh was made between the first informant and one Hamid for sale consideration of Rs. 1,65,000/-. It is further alleged that the said oral agreement for sale of property was made through the co-accused Tejpal and out of Rs. 1,65,000/-, Rs. 90,000/- was paid to Hamid, whereas balance amount of Rs. 75,000/- was taken away by the co-accused Tejpal. The said oral agreement did not materialise and subsequently, Hamid had returned Rs. 90,000/- to the first informant, however, it is alleged that balance amount of

Rs. 75,000/- given to the co-accused Tejpal was not being returned back and when insistence was made for payment of the balance amount, the co-accused Tejpal along with the applicant started extending death threats to the first informant and her daughter by stating them to be characterless, consequent to which, the victim committed suicide.

7. Learned counsel for the applicant has next submitted that no autopsy was performed on the persons of the deceased and body was cremated by the first informant herself, as such, cause of death could not be ascertained.

8. Learned counsel for the applicant has next submitted that even according to the prosecution own case, there is no clinching evidence to show that the applicant, in any manner, goaded her, instigated her or abetted her to commit suicide. Infact, on account of over sensitivity, the victim had committed suicide, for which the applicant cannot be held responsible.

9. Learned counsel for the applicant has next submitted that applicant is in jail since 08.08.2023 and has no criminal history to her credit. In case, the applicant is released on bail, she will not misuse the liberty of bail and will co-operate in the trial by all means. The chances of trial being concluded in near future is very bleak due to heavy dockets. There is no chance of applicant fleeing away from judicial process or tampering with the witnesses, as such, she be released on bail.

10. Per contra, learned A.G.A. has opposed the prayer for bail but could not dispute aforesaid facts.

11. Having considered the rival submissions made by learned counsel for both the parties and on perusal of the record, it is evident that an oral agreement for sale of property situate in Kasba- Shergarh was made between the first informant and one Hamid for sale consideration of Rs. 1,65,000/-. The said oral agreement for sale of property was made through the co-accused and out of Rs. 1,65,000/-, Rs. 90,000/- was paid to the Hamid whereas balance amount of Rs. 75,000/- was taken away by the co-accused Tejpal. The said oral agreement did not materialise and subsequently, Hamid had returned Rs. 90,000/- to the first informant, however it is alleged that balance amount of Rs. 75,000/-

given to the co-accused Tejpal was not being returned back and when insistence was made for payment of money, the co-accused Tejpal along with the applicant started extending death threats to the first informant and her daughter by calling her characterless, consequent to which, the victim committed suicide. No autopsy was performed and body was cremated by the first informant herself, as such cause of death could not be ascertained. Even according to the prosecution own case, there is no clinching evidence to show that the applicant, in any manner, goaded her, instigated her or abetted her to commit suicide. Infact on account of over sensitivity, the victim had committed suicide, for which the applicant cannot be held responsible, as such, prima facie a case for bail is made out. Furthermore, the applicant is in jail since 08.08.2023 and there is no chance of applicant fleeing away from judicial process or tampering with the witnesses. Moreover, the chances of trial being concluded in near future is very bleak due to heavy dockets.

12. Let the applicant- **Smt. Santosh Kumari** be released on bail in the aforesaid case crime number on furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(1). The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(2). The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A IPC.

(3). In case, the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A IPC.

(4). The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii)

framing of charge and (iii) 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 him in accordance with law.

13. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

14. It is further directed that the identity, status and residence proof of the sureties be verified by the authorities concerned before they are accepted.

15. In case of breach of any of the above conditions, the trial court will be at liberty to cancel the bail.

16. Office is directed to send a soft copy of this bail order by e-mail to the applicant through the Jail Superintendent concerned.

17. The bail application is accordingly **allowed**.

Order Date :- 19.10.2023

Subham