

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39586 of 2023

Applicant :- Deepak

Opposite Party :- State of U.P.

Counsel for Applicant :- A.Z.Khan

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. A.Z.Khan, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant **Deepak** seeking his enlargement on bail in Case Crime No.354 of 2022, under Sections 498-A, 304-B, 315 I.P.C., and 3/4 Dowry Prohibition Act, Police Station Gagalheri District Saharanpur during the pendency of trial.

4. Record shows that marriage of applicant Deepak was solemnized with Riya on 09.11.2021. However, just after expiry of a period of 10 months from the date of marriage of the applicant, an unfortunate incident occurred on 05.10.2022 in which the wife of the applicant consumed some poisonous substance, ultimately, the wife of the applicant died.

5. After above-mentioned 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 the deceased was conducted. In the opinion of the autopsy surgeon, the cause of death of the deceased could not be ascertained. As a result, the viscera of the deceased was preserved. However, the autopsy surgeon found following ante-mortem injuries were found on the body of the deceased:-

Multiple abrasion 2x 1/2 cm. One cm. below from (lt.) mandible.

6. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C.

Witnesses so examined have supported the F.I.R. On the basis of above and other material collected by the Investigating Officer he came to the conclusion that the complicity of two of the named accused i.e. applicant Deepak and Imarti (mother-in-law) of the deceased is established in the crime in question. He accordingly submitted the charge sheet dated 27.12.2021 against the aforementioned named accused.

7. Learned counsel for applicant submits that though the applicant is the husband of the deceased, named and charge sheeted accused yet he is liable to be enlarged on bail. Immediately after the occurrence it was the applicant who took the victim to the hospital where ultimately she was deceased as brought dead. With reference to the post-mortem of the deceased, the learned counsel for applicant submits that the bona fide of applicant is explicit from the fact that no internal or external and ante-mortem injury was found on any vital part of the body of deceased. The only ante-mortem injury found by the autopsy surgeon on the body of the deceased is multiple abrasion. According to the learned counsel for applicant the deceased was a short tempered lady and she has taken the extreme step of committing suicide by consuming some poisonous substance. As per the viscera report of the deceased a foreign chemical compound namely Organochloro Insecticide was found in the body parts of the deceased. He, therefore, submits that the death of the deceased is a suicidal death. Considering the nature of the death, applicant is not liable to be awarded the maximum sentence under Section 304-B.

8. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 06.10.2022. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. Upto this stage, no such circumstance has emerged 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 cooperate with the trial.

9. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is husband of the deceased and named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The death of the deceased has occurred in her marital home just after expiry of a period of 10 months from the date of marriage of the applicant with the deceased. Since occurrence has taken place within 7 years of

marriage and at her marital home, therefore, the death of the deceased is a dowry death. Applicant is husband of the deceased and also an inmate of the house. Consequently, the burden is upon applicant to not only explain the manner of occurrence but also his innocence in terms of Sections 113B and 106 Evidence Act. However, applicant has miserably failed to discharge the said burden upto this stage. He therefore, submits that no sympathy be shown by this Court in favour of applicant.

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

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of applicant, gravity and nature of offence and accusation made coupled with the fact that the objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant with reference to the record at this stage, therefore, irrespective of the above submissions urged by the learned counsel for applicant in respect of the present application for bail, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

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

13. It is, accordingly **rejected**.

Order Date :- 31.10.2023

Imtiyaz