

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46862 of 2022

Applicant :- Jishan

Opposite Party :- State of U.P.

Counsel for Applicant :- Madhava Nand Shukla, Jitendra Kumar Shukla

Counsel for Opposite Party :- G.A., Awdhesh Singh

Hon'ble Rajeev Misra, J.

1. Heard Mr. Jitendra Kumar Shukla, the learned counsel for applicant, the learned A.G.A. for State and Mr. Awdhesh Singh, the learned counsel representing first informant.
2. Perused the record.
3. This application for bail has been filed by applicant-Jishan seeking his enlargement on bail in Case Crime No. 229 of 2021, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Jansath, District-Muzaffar Nagar during the pendency of trial.
4. Record shows that in respect of an incident, which is alleged to have occurred on 16.10.2021, a prompt FIR dated 16.10.2021 was lodged by first informant-Intazar (father of the deceased) and was registered as Case Crime No. 229 of 2021, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Jansath, District-Muzaffar Nagar. In the aforesaid FIR, 6 persons namely - (1) Jishan (applicant herein), (2) Alihasan, (3) Smt. Meena, (4) Rizwan, (5) Gulfam and (6) Rizwana have been nominated as named accused.
5. The gravamen of the allegations made in the FIR to the effect that marriage of Basarjahan @ Sonam (daughter of first informant) was solemnized on 30.01.2021 with Jishan i.e. applicant herein. The named accused were not satisfied with the amount of goods and dowry given at the time of marriage. Subsequently, additional demand of dowry to the tune of Rs. 5 lacs and a tractor was made. As the demand of additional dowry was not fulfilled, the daughter of the first informant was put to death by poisoning her.

6. Learned counsel for applicant contends that though applicant is the husband of deceased, a named as well as charge sheeted accused inasmuch as, the charge sheet has been submitted on 23.12.2021 against applicant and 2 others namely - Alihasan and Smt. Meena i.e. father-in-law and mother-in-law of deceased yet the applicant is liable to be enlarged on bail. Attention of the Court was invited to the post mortem report of the deceased and on basis thereof, the learned counsel for applicant submits that the Autopsy Surgeon, who conducted autopsy of the body of deceased, did not find any external ante-mortem injury on the body of deceased. However, to ascertain the cause of death, the viscera of the deceased was preserved. According to the learned A.G.A., as per the viscera report, a foreign chemical compound namely Aluminum Phosphide was found in the body parts of deceased sent for chemical examination. He, therefore, submits that prima-facie the death of deceased is a suicidal death. Allegations made in the FIR qua the demand of additional dowry and commission of physical and mental cruelty upon deceased are vague and bald allegations being devoid of material particulars and therefore, the same are liable to be ignored.

7. 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 18.10.2021. As such, he has undergone more than 2 years of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. On the cumulative strength of above, he, therefore, submits 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 the trial.

8. Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that the marriage of applicant was solemnized with deceased on 30.01.2021. The death of deceased has occurred just after expiry of a period of 7 months and 16 days from the date of marriage of deceased at her marital home. Since the death of deceased had occurred before expiry of a period of 7 years from the date of her marriage and at her marital home, therefore, the same is a dowry death. Consequently, the burden is upon the applicant who is the husband of deceased and an inmate of the

house to not only explain the manner of occurrence but also his innocence in terms of Sections 106 and 113-B of the Evidence Act. The applicant has, however, miserably failed to discharge the said burden up to this stage. The deceased was a young lady aged about 19 years who has died in unnatural circumstance. Apart from above, the period of incarceration undergone by the applicant is by itself not so sufficient so as to enlarge him on bail. It is thus urged that no sympathy be shown by this Court in favour of applicant.

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

10. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, complicity of applicant, accusations made coupled with the fact that since the death of deceased has occurred just after expiry of 7 months and 16 days from the date of her marriage and at her marital home, the applicant is the husband of deceased and an inmate of the house, but has failed to discharge the burden in terms of Sections 106 and 113-B of the Evidence Act, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

11. As a result, present application for bail fails and is liable to be rejected.

12. It is accordingly **rejected**.

Order Date :- 27.10.2023

Vinay