

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40143 of 2023

Applicant :- Shiv Nath

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Mishra

Counsel for Opposite Party :- G.A.,Atul Kumar Singh

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Sanjay Mishra, learned counsel for the applicant, Sri Atul Kumar Singh, learned counsel for the first informant, Sri Ram Prakash Shukla, learned AGA for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Shiv Nath, seeking enlargement on bail during trial in connection with Case Crime No. 164 of 2023, under Sections 147, 323, 504, 506, 306 I.P.C. registered at P.S. Ekdil, District Etawah.
4. The F.I.R. of the matter was lodged on 07.7.2023 by Ramvir Singh against the applicant and 07 other accused persons alleging therein that his sister Smt. Sunita Devi was married to the applicant in the year 2012 and from the wedlock four children were born. After marriage there used to torture physically and mentally, assault and keep her hungry and thirsty by her in-laws including the applicant. They used to torture her by various ways by locking her inside a room and not giving food. On 28.6.2023 they locked her inside a room. She raised a shout after which they assaulted her mercilessly and then on 29.6.2023 she ran away from the place and jumped before the train and committed suicide.
5. Learned counsel for the applicant argued that although the applicant is the husband of the deceased but he has been falsely implicated in the present case. It is argued that the F.I.R. of the matter has been lodged after an explained delay of 08 days. It is further argued that the applicant was married with the deceased around 11 years back and from the wedlock four children were born. It is argued that the applicant has no motive to commit the aforesaid offence. It is argued that the deceased committed suicide as there was unrest in the family due to financial crisis since the applicant was jobless and doing farming and his financial condition was not good. Learned counsel for the applicant argued that there is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased, the applicant has no mens-rea at all, there is no overt act whatsoever of the applicant, which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence. It is argued that the applicant has no other criminal antecedents as stated in para-29 of the affidavit and is in jail since 25.7.2023.
6. Per contra, learned State counsel opposed the prayer for bail.
7. After having heard learned counsels for the parties and perusing the record, it is evident that the F.I.R. has been lodged after an explained delay of 08 days. Marriage of the applicant with the deceased was solemnized 11 years back. From wedlock four children were born. There is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased, the applicant has no mens-rea at all, there is no

overt act whatsoever of the applicant, which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant- Shiv Nath, 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., 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, in accordance with law, under section 174-A I.P.C.

(V) 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 him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 29.11.2023

Naresh