

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40092 of 2023

Applicant :- Ram Prakash

Opposite Party :- State of U.P.

Counsel for Applicant :- Amit Kumar Singh, Jitendra Kumar, Keshav Hari Dixit, Km Astha, Purushottam Dixit

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Purushottam Dixit, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

Supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record.

This application for bail has been filed by applicant Ram Prakash seeking his enlargement on bail in Case Crime No. 155 of 2023, under Sections 498-A, 304-B IPC and Sections 3/4 D.P. Act, P.S. Bharthana, District Etawah, during the pendency of trial.

Record shows that the marriage of Kiran was solemnized with Dharvendra, son of applicant on 05.02.2022. However, after expiry of a period of 1 year and approximately 3 months from the date of marriage of son of applicant, an unfortunate incident occurred on 1.5.2023, in which Kiran, the daughter-in-law of applicant attempted to commit suicide by consuming some poisonous substance.

It is the case of the applicant that immediately after the occurrence, the victim was rushed to hospital for medical treatment, but she ultimately succumbed to poisonous substance consumed by her on 8.5.2023.

The information regarding the death of the deceased at the concerned police station was given by the hospital staff and on the said information, the inquest (panchayatnama) of the deceased was conducted on 9.5.2023. In the opinion of witnesses of inquest (panch witnesses), the nature of death of the deceased could not be

categorized, nor the cause of death of the deceased could be specified. Thereafter, post mortem of the body of the deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of the deceased could not opine the cause of death of deceased. Hence, viscera was preserved. However, the Autopsy Surgeon did not find any external ante mortem injury on the body of the deceased.

After aforementioned proceedings had been undertaken, a delayed F.I.R. dated 15.5.2023 came to be lodged by Jaskaran (brother of the deceased) and was registered as Case Crime No. 155 of 2023, under Sections 498-A, 304-B IPC and Sections 3/4 D.P. Act, P.S. Bharthana, District Etawah. In the aforesaid F.I.R. six persons namely Dharvendra, Prakash, Angad cousin father-in-law (chachiya sasur), Bhuvnesh, Manju and Vidya sister-in-law (jethani) of the deceased have been nominated as named accused.

After above mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime no. in terms of Chapter XII Cr. P. C. Investigating Officer ultimately submitted the charge sheet dated 8.8.2023, whereby four of the named accused namely Dharvendra, Ram Prakash, Jitendra alias Manju (jeth) and Vidya (jethani) have been charge sheeted, whereas other two named accused have been exculpated.

Learned counsel for applicant contends that though applicant is the father-in-law of the deceased a named as well as charge sheeted accused, yet he is liable to be enlarged on bail. The deceased was a short tempered lady and she has taken the extreme step of terminating her life by consuming some poisonous substance. The bona fide of the applicant is also explicit from the fact that victim was rushed to hospital namely Safai Government Hospital, Etawah, where the victim was under treatment till 8.5.2023. No statement of the victim was recorded under Section 161 Cr. P. C. nor any dying declaration of the victim was recorded. Bona fide of the applicant is also explicit from the fact that no external or internal ante mortem injury was found on the body of the deceased.

With reference to F.I.R., the learned counsel for applicant contends that the allegations made in the F.I.R. regarding demand of Rs. 1 lac towards additional demand of dowry and an Alto car and commission of physical and mental criminality upon deceased on account of non fulfillment of aforesaid additional demand of dowry are vague and bald allegation, inasmuch as the same are devoid of material particulars. No attempt has been made by the

first informant to explain the same in his statement under Section 161 Cr. P. C. With reference to the judgement of the Supreme Court in **Kahkashan Kausar Vs. State of Bihar, (2022) 6 SCC 599**, the learned counsel for applicant contends that in view of above, the said allegations are liable to be ignored by this Court at this stage.

Considering the nature of death, which prima facie is a suicidal death, applicant is not liable to be awarded the maximum sentence under Section 304 B IPC. Moreover, the applicant cannot be said to be beneficiary of the alleged demand of dowry. The husband of the deceased i.e. son of the applicant is already languishing in jail.

Even otherwise, applicant is a man of clean antecedents, inasmuch he has no criminal history to his credit except the present one. Applicant is in jail since 18.5.2023. As such, he has undergone more than 5 months 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, upto this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he, therefore, submits that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since the applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. The death of the deceased has occurred within 7 years of her marriage at her marital home. As such, the death of the deceased is a dowry death. The deceased was a young lady aged about 19 years who committed suicide just after expiry of 1 year and approximately 3 months from the date of her marriage. Since, applicant is an inmate of the house and admittedly (father-in-law of the deceased), therefore, the burden is upon applicant to explain not only the manner of occurrence but also his innocence in terms of Sections 106 and 113 B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. He, therefore, contends that no sympathy be shown by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of record, nature of offence, evidence,

complicity of the accused, accusation made, the nature and gravity of offence, coupled with the fact that prima facie the death of the deceased is a suicidal death by consuming some poisonous substance, inasmuch as no other external ante mortem injury was found on the body of the deceased, allegations made in the F.I.R. with regard to the demand of additional dowry of Rs. 1 lac and a Alto car are prima facie vague and bald allegations, the same are devoid of material particulars, in view of the judgement of the Supreme Court in **Kahkashan Kausar Vs. State of Bihar, (supra)**, the aforesaid allegations are prima facie liable to be ignored at this stage, upto this stage, applicant is the father-in-law of deceased, he cannot be said to be beneficiary of alleged demand of dowry, bona fide of applicant is explicit from the fact that the victim was immediately rushed to Safai Government Hospital, Etawah, where victim was under treatment till 28.5.2023, no statement of the victim was recorded under Section 161 Cr. P. C. or her dying declaration was recorded, the clean antecedents of the applicant, the period of incarceration undergone, 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, in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during pendency of trial, therefore, irrespective of objections urged 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 **Ram Prakash** involved in aforesaid case crime number, be released on bail on his 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 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.

(ii) 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 I.P.C..

(iii) 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.

(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 him 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 :- 28.10.2023

HSM