

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40105 of 2023

Applicant :- Awadhesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Amit Kumar Rai

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Amit Kumar Rai, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Awadhesh Kumar seeking his enlargement on bail in Case Crime No. 113 of 2023, under Sections 498-A, 304-B IPC and Sections 3/4 D.P. Act, P.S. Khaga, District Fatehpur, during the pendency of trial.

Learned counsel for applicant contends that though applicant is the husband of the deceased a named as well as charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant on 5.5.2023, 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 hanging herself. The bona fide of the applicant is explicit from the fact that except for the ligature mark, no other external or internal injury was found on the body of the deceased. Prima facie, the death of the deceased is a suicidal death. In view of above, applicant is not liable to be awarded the maximum sentence under Section 304 B IPC. Considering the precarious condition of the applicant, inasmuch as the son of the applicant is aged about 2 years, the learned counsel for applicant contends that in view of above, by no stretch of imagination it can be said that applicant shall ensure the death of the wife i.e. mother of the infant. With reference to the F.I.,R. he submits that vague and bald allegations have been made in the F.I.R. regarding additional demand of motorcycle. However, the said allegation has not been evidenced by material particulars in the F.I.R. nor an attempt has been made to explain the same in the statement of the first informant recorded under Section 161 Cr. P. C.

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 12.4.2023. As such, he has undergone more than 6 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 husband of deceased, 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 and at her marital home. As such, the death of the deceased is a dowry death. The deceased was a young lady, who committed suicide within 7 years of her marriage. Since, applicant is an inmate of the house and admittedly (husband 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, the learned counsel representing first informant 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 except for the ligature mark, 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 a motorcycle are prima facie vague and bald allegations, the same have not been substantiated by material particulars, no attempt has been made by the first informant to explain the same in his statement under Section 161 Cr. P. C. in view of the judgement of the Supreme Court in **Kahkashan Kausar Vs. State of Bihar, (2022) 6 SCC 599**, the aforesaid allegations are prima

facie liable to be ignored at this stage, the clean antecedents of 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, yet 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 the 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 **Awadhesh Kumar** 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