Court No. - 65
Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41222 of 2023
Applicant :- Sudama Devi
Opposite Party :- State of U.P.
Counsel for Applicant :- Bharat Singh
Counsel for Opposite Party :- G.A.,Mahendra Singh

Hon'ble Rajeev Misra,J.

Heard Mr. Bharat Singh, the learned counsel for applicant, the learned A.G.A. for State and Mr. Mahendra Singh, the learned counsel representing first informant.

Perused the record.

This application for bail has been filed by applicant Sudama Devi seeking her enlargement on bail in Case Crime No. 200 of 2023, under Sections 498A, 304B IPC and Sections 3/4 Dowry Prohibition Act, P.S. Bisauli, District Badaun, during the pendency of trial.

Record shows that marriage of Vikesh, son of applicant was solemnized with Renu on 19.06.2022. However, just before expiry of a period of one year from the date of marriage of applicant, an unfortunate incident occurred on 7.4.2023, in which daughter-in-law of applicant died as she committed suicide by hanging herself.

Learned counsel for applicant contends that applicant is the mother-in-law of deceased, a named as well as charge sheeted accused, inasmuch as charge sheet has been submitted against applicant and others on 4.8.2023, yet the applicant being a lady is liable to be enlarged on bail. Attention of the Court was invited to the provisions contained in proviso to Section 437 Cr. P. C. On basis thereof he submits that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a woman of clean antecedents having no criminal history to her credit except the present one. Applicant is in jail since 28.6.2023. As such, he has undergone 4 months of incarceration. the police report in terms of Section 173 (2) Cr. P. C. i.e. charge sheet has already been submitted. As such, 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 applicant during the pendency of trial, It is thus urged that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial

Per contra, the learned A.G.A. and Mr. Mahendra Singh, the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore, she does not deserve any indulgence by this Court. The death of the deceased has occurred at the marital home and within 7 years of her marriage. As such, death of the deceased is a dowry death. The deceased was a young lady aged about 20 years and her death has occurred in unnatural circumstance. By reason of above, burden is upon the applicant to not only explain the manner of occurrence but also her innocence, in terms of Section 106 and 113 B of Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. They further submit that no sympathy be shown by this Court in favour of applicant. However, they could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for state, the learned counsel for first informant, upon perusal of material brought on record, evidence, nature of offence, gravity, complicity of the accused, accusation made and coupled with the fact that applicant is the mother-in-law of the deceased, the applicant being a lady is, therefore, entitled to the benefit of provisions contained in proviso to Section 437 Cr. P. C., the clean antecedents, the period of incarceration undergone by applicant, the police report in terms of Section 173 (2) Cr. P. C. i.e. charge sheet has already been submitted. As such, 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 applicant during the pendency of trial, the judgement of the Supreme Court in **Sumit Subhash Chandra Gangwal Vs. State of Maharashtra, 2023 Livelaw (S.C.) 373 (para 5)**, therefore, irrespective of objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail, but without making any comments on merits of the case, the applicant has made out a case for bail.

Accordingly, the bail application is **allowed.**

Let the applicant **Sudama Devi** 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 she 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 her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under section 229-A I.P.C..

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure her 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 her, 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 her 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 her 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 :- 1.11.2023/HSM

Digitally signed by :-
HARI SHANKER MISHRA
High Court of Judicature at Allahabad