

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 41357 of 2023

**Applicant :-** Smt. Saraswati

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ajay Kumar Vashistha

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Misra,J.**

Heard Mr. Ajay Kumar Vashistha, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Smt. Saraswati seeking her enlargement on bail in Case Crime No.110 of 2023, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Sidhpura, district Kasganj, during the pendency of trial.

Perused the record.

At the very outset, the learned counsel for applicant submits that though applicant is the mother-in-law of the deceased, a named/charge-sheeted accused yet, she is liable to be enlarged on bail. The father-in-law of the deceased, namely, Ram Bharose has already been enlarged on bail by this Court vide order dated 15.09.2023 passed in Criminal Misc. Bail Application No.38452 of 2023 (Ram Bharose Vs. State of U.P.). For ready reference, the order dated 15.09.2023 is reproduced herein-under :-

"Heard Mr. Ajay Kumar Vashistha, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Ram Bharose seeking his enlargement on bail in Case Crime No.110 of 2023, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Sidhpura, district Kasganj, during the pendency of trial.

Perused the record.

Learned counsel for the applicant contends that applicant is the father-in-law of the deceased. Though the applicant is a named as well as charge-sheeted accused, inasmuch as, the charge-sheet has been submitted against the applicant and other co-accused on 18.06.2023 yet he is liable to be enlarged on bail. The deceased was a short tempered lady and she has taken the extreme step to commit suicide by hanging herself. The death of the deceased is a suicidal death as is clearly evident from the post-mortem report of the deceased. In the opinion of the autopsy surgeon, who conducted the autopsy of body of the deceased, the cause of death of the deceased is asphyxia as a result of ante-mortem hanging. The bona fide of the applicant is explicit from the fact that except for the ligature mark, no other external ante-mortem injury

was found on the body of the deceased. Attention of the Court was invited to paragraph 12 of the affidavit filed in support of bail application and on the basis of thereof it is submitted by the learned counsel for applicant that since the applicant is an old man aged about 72 years therefore, he is entitled to the benefit of provisions contained in proviso to Section 437 CrPC. Even otherwise, the applicant cannot be said to be the beneficiary of the alleged demand of additional dowry. The allegations made in the FIR with regard to demand of additional dowry are vague and bald allegations. No material particulars in respect of the same have been mentioned either in the F.I.R. or in the statement of the first informant recorded under Section 161 CrPC. The said fact is not contradicted by the learned A.G.A. The applicant could not have even abetted, instigated or conspired in the commission of crime. There is nothing on record to conclude that the deceased committed suicide on account of an immediate act of applicant. Attention of the Court was then invited to the judgement of the Supreme Court in *Kahkashan Kausar @ Sonam & others Vs. State of Bihar* (2022) 6 SCC 599 and on basis thereof the learned counsel for applicant urged that since material particulars with regard to alleged demand of additional dowry are conspicuous by their absence in the F.I.R. as well as in the statement of the witnesses so examined, the same are therefore liable to be ignored by this Court at this stage. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in custody since 13.06.2023. As such, he has undergone more than three months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant. He, therefore, contends that the 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.

Per contra, the learned A.G.A. has vehemently 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. However, he could not dislodge the factual and 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, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the applicant is the father-in-law of the deceased, the applicant is aged about 72 years, the averment which has been categorically pleaded in paragraph 12 of the affidavit filed in support of the bail application the learned A.G.A. on the basis of instructions received by him could not dispute such averment, therefore he is entitled to the benefit of the provisions contained in proviso to Section 437 CrPC, the allegations made in the FIR with regard to alleged demand of additional dowry are vague and bald being devoid of material particulars therefore, in view of law laid down by Apex Court in *Kahkashan Kausar @ Sonam & others* (supra) the same are prima facie liable to be ignored at this stage, the applicant cannot be said to be the beneficiary of the alleged demand of dowry, the bona fide of the applicant is explicit from the fact that except for the ligature mark no other external ante-mortem injury was found on the body of the deceased by the autopsy surgeon, in spite of the fact that the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted as such the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized, yet the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the proceeding of trial, the judgement of Supreme Court in *Sumit Subhashchandra Gangwal Vs. State of Maharashtra* 2023 Live Law (SC) 373 (paragraph 5), the clean antecedents of the applicant and the period of incarceration undergone, 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 Bharose, 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."**

**On the above premise, it is then contended by the learned counsel for applicant that the case of the present applicant is similar and identical to aforementioned named/charge-sheeted co-accused Ram Bharose, who is the father-in-law of the deceased. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforesaid named/charge-sheeted co-accused so as to deny her bail. He, therefore, submits that in view of above and for the facts and reasons recorded in the bail order of aforesaid co-accused, the applicant is also liable to be enlarged on bail on the ground of parity.**

**It is then contended by the learned counsel for applicant that since the applicant is the mother-in-law of the deceased, a lady therefore, she is entitled to the benefit of provisions contained in proviso to Section 437 CrPC. Even otherwise, the applicant is the mother-in-law of the deceased and therefore she cannot be said to be the beneficiary of the alleged**

demand of dowry. The son of the applicant/husband of the deceased is already in jail.

Even otherwise, applicant is a woman of clean antecedents having no criminal history to her credit except the present one. Applicant is in custody since 13.06.2023. As such, she has undergone more than five months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant. In view of the nature of death of deceased, applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case she is convicted. He, therefore, contends that applicant is liable to be enlarged on bail. In case the 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. has vehemently opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused therefore, she does not deserve any indulgence by this Court. The deceased was a young lady. The occurrence has taken place within seven years of marriage of the deceased and that too in her marital home. As such, the death of the deceased is a dowry death. Since the applicant is mother-in-law of the deceased and an inmate of the house therefore, the burden is upon the applicant to not only explain the manner of occurrence but also her innocence in terms of Sections 106 and 113-B of the Evidence Act. However, upto this stage, the applicant has miserably failed to discharge the said burden. He, therefore, contends that no sympathy be shown by this Court in favour of applicant. However, he could not dislodge the factual and 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, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that applicant is the mother-in-law of the deceased, similarly situate and circumstanced co-accused Ram Bharose, who is father-in-law of the deceased has already been enlarged on bail, the learned A.G.A. could not point out any such distinguishing feature in the case of the present applicant to distinguish the case of present applicant from aforementioned charge-sheeted but bailed out co-accused so as to deny bail to the applicant, the applicant being a lady is entitled to the benefit of the provisions contained in proviso to Section 437 CrPC, prima facie the death of the deceased is a suicidal death, considering the nature of death of the deceased the

applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case she is convicted, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted as such the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized, yet in spite of above the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the proceeding of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (SC) 373 (paragraph 5)**, the clean antecedents of the applicant, the period of incarceration undergone, therefore irrespective of the objections raised 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 **Smt. Saraswati**, involved in aforesaid case crime number, be released on bail on her 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 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 :- 28.11.2023.**

Rks.