

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41243 of 2023

Applicant :- Hargyan

Opposite Party :- State of U.P.

Counsel for Applicant :- Irshad Ahmad

Counsel for Opposite Party :- G.A.,Rakesh Pati Tiwari

Hon'ble Rajeev Misra,J.

1. Heard Mr. Irshad Ahmad, the learned counsel for applicant, the learned A.G.A. for State and Mr. Vivek Kumar Tiwari, Advocate, holding brief of Mr. Rakesh Pati Tiwari, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Hargyan, seeking his enlargement on bail in Case Crime No. 303 of 2022, under Sections 498-A, 304-B IPC & Sections 3/4 Dowry Prohibition Act, Police Station-Kaila Devi, District-Sambhal during the pendency of trial.

4. Record shows that the marriage of applicant-Hargyan was solemnized with Shivdhara on 23.04.2019. However, just after expiry of a period of 3 years and 6 months from the date of marriage of applicant, an unfortunate incident occurred on 08.11.2022 in which, wife of applicant died as she committed suicide by hanging herself.

5. Learned counsel for applicant submits that though applicant is the husband of deceased, a named as well as charge sheeted accused inasmuch as, the charge sheet has been submitted on 07.02.2023 against 4 persons namely (1) Hargyan Singh i.e. applicant herein (husband of the deceased), (2) Smt. Kallo (Mother-in-law of the deceased) and (3) Gabdu (Jeth of the deceased) and (4) Pappu (Jeth of the deceased) yet the applicant is liable to be enlarged on bail. According to the learned counsel for applicant, 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 post mortem report of deceased wherein, the Autopsy Surgeon has not found

any grievous or fatal ante-mortem injury on the body of deceased except the ligature mark. It is then contended that the occurrence in question has occurred after expiry of a period of 3 years and 6 months from the date of marriage of applicant. Considering the nature of death of deceased, which is prima-facie homicidal, the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC, in case, he is convicted. Attention of Court was then invited to the FIR wherein, it has been alleged that demand of Alto Car was subsequently raised. However, as the said demand was not fulfilled, physical and mental cruelty was committed upon the deceased. However, the allegation so made in the FIR is not substantiated by material particulars, therefore, the said allegations is a vague and bald allegation. Attention of Court was then invited to the statement of first informant recorded under Section 161 Cr.P.C., which is on record at page 27 of the paper book. The first informant in his statement has also not made any attempt to establish the said allegation inasmuch as, the material particulars, with regard to the manner of time of alleged demand have not been specified. Referring to the judgment of Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**, it is urged by the learned counsel for applicant that since the allegations made in the FIR with regard to demand of dowry and consequential, commission of physical and mental cruelty upon deceased on account of non fulfillment of demand of dowry have not been substantiated by material particulars, therefore, the same are liable to be ignored by this Court at this stage.

6. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 30.11.202. As such, he has undergone more than 11 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he submits that 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.

7. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is the husband of deceased, a named as well as charge sheeted accused, therefore, he

does not deserve any indulgence by this Court. The death of deceased has occurred in her marital home within 7 years of her marriage. As such, the death of deceased is a dowry death. The deceased is a young lady aged about 21 years who has died in unnatural circumstance. Since the occurrence has taken place in the house of the applicant and applicant is the husband of deceased, therefore, the burden is upon the applicant to not only explain 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 up to this stage. It is thus urged that no sympathy be shown by this Court in favour of applicant. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

8. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the marriage of applicant was solemnized with the deceased on 23.04.2019, the occurrence giving rise to present criminal proceedings has occurred after expiry of a period of 3 years and 6 months from the date of marriage, prima-facie, the death of deceased is suicidal, in view of above, the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC, in case of his conviction, the bona-fide of the applicant is explicit from the fact that except for the ligature mark, no other grievous or fatal external ante-mortem injury was found on the body of deceased by the Autopsy Surgeon, the allegations made in the FIR with regard to the demand of additional dowry and commission of physical and mental cruelty upon the deceased on account of non fulfillment of additional demand of dowry are vague and bald allegations inasmuch as, the same are devoid of material particulars, no attempt has been made by the first informant in his statement under Section 161 Cr.P.C. to explain the same with material particulars and details, in view of law laid down by the Apex Court in **Kahkashan Kausar @ Sonam (Supra)**, the aforesaid allegations are liable to be ignored by this Court 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. and the learned counsel representing first informant could not point out any such circumstance from the record necessitating

the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

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

10. Let the **applicant-Hargyan**, be released on bail in the aforesaid case crime number on his 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 SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/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 HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/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 HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(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 THE HIM/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.

11. 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 :- 7.11.2023

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