

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41521 of 2023

Applicant :- Rajesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Jeet Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Chandra Jeet Singh, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Rajesh Kumar, seeking his enlargement on bail in Case Crime No. 319 of 2022, under Sections 498-A, 304-B, 323 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Ughaiti, District-Budaun during the pendency of trial.

4. Record shows that marriage of applicant-Rajesh Kumar was solemnized with Begamwati on 24.06.2018. From the aforesaid wedlock, 3 children were born. However, after expiry of a period of 4 years, 5 months and 2 days from the date of marriage of the applicant, an unfortunate incident occurred on 26.11.2022 in which, the wife of applicant died as she committed suicide by hanging herself.

5. After the occurrence had taken place on 26.11.2022, a prompt FIR dated 26.11.2022 was lodged by first informant-Ramveer Singh (father of the deceased) and was registered as Case Crime No. 319 of 2022, under Sections 498-A, 304-B, 323 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Ughaiti, District-Budaun. In the aforesaid FIR, 4 persons namely (1) Rajesh Kumar (applicant herein), (2) Ompal, (3) Jwala Devi and (4) Nisha Devi have been nominated as named accused.

6. Learned counsel for applicant contends that though applicant is the husband of deceased, a named as well as charge sheeted accused yet applicant is liable to be enlarged on bail. The deceased was a short tempered lady and she has taken the extreme step of

committing suicide by hanging herself. 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 by the Autopsy Surgeon on the body of deceased. From the aforesaid wedlock of applicant and the prosecutrix, 3 children were born. Considering the precarious condition of the applicant, it is impossible to believe that applicant shall abet, instigate or conspire in the death of deceased. Attention of Court was then invited to the FIR giving rise to present criminal proceedings. With reference to above, the learned counsel for applicant submits that in the FIR, the only allegation that has been made is that cruelty was committed upon deceased for non-fulfillment of the alleged demand of dowry. However, neither the demand, alleged to have been made, has been specified nor the manner of cruelty alleged to have been committed upon the deceased have been detailed. Reference was then made to the statement of first informant recorded under Section 161 Cr.P.C., which is on record at page 45 of the paper book. Learned counsel for applicant with reference to above contends that in his statement under Section 161 Cr.P.C., the first informant has improved upon the FIR by stating that a sum of Rs. 20 thousand was demanded towards additional dowry along with a buffalo and a Bullet Motorcycle. Learned counsel for applicant thus contends that though FIR is not the encyclopedia of the prosecution case but it must disclose the basic prosecution case. Reference in this regard is made to the following judgments of the Supreme Court;-

(i). Manoj and Others Vs. State of Maharashtra, (1999) 4 SCC 268,

(ii). Subhash Kumar Vs. State of Uttarakhand, (2009) 6 SCC 641,

(iii). Achhar Singh Vs. State of M.P. (2021) 5 SCC 543,

7. The omission on the part of the first informant regarding the quantum of dowry and the manner in which, the cruelty was committed upon deceased in the FIR clearly speaks of the bona-fide of the applicant. The improvement occurring in the statement of first informant is an afterthought for which, no explanation has been offered.

8. 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 07.12.2022. As such, he has undergone more than 11 and 1/2 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.

9. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since 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. Applicant is the husband of deceased and an inmate of the house where the occurrence had occurred. As such, 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, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

10. Having heard, the learned counsel for applicant, the learned A.G.A. for State, 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 24.06.2018, the occurrence giving rise to present criminal proceedings has occurred after expiry of a period of 4 years, 5 months and 2 days from the date of marriage, prima-facie, the death of deceased is a suicidal death, 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 external ante-mortem injury was found on the body of deceased by the Autopsy Surgeon, who conducted autopsy of the body of deceased, from the wedlock of the applicant and the prosecutrix, 3 children were born, considering the precarious condition of the applicant, it is impossible to believe that applicant shall abet, instigate or conspire in the death of deceased, the only allegation that has been made in the FIR is that cruelty was committed upon deceased for non-fulfillment of the alleged demand of dowry, however, neither the demand, alleged to have been made, has been specified nor the

manner of cruelty alleged to have been committed upon the deceased have been detailed, in his statement under Section 161 Cr.P.C., the first informant has improved upon the FIR by stating that a sum of Rs. 20 thousand was demanded towards additional dowry along with a buffalo and a Bullet Motorcycle, it is well settled that though FIR is not the encyclopedia of the prosecution case but it must disclose the basic prosecution case, the omission on the part of the first informant in the FIR regarding the quantum of dowry and the manner in which, cruelty was committed upon deceased in the FIR clearly speaks of the bona-fide of the applicant, the improvement occurring in the statement of first informant is an afterthought for which, no explanation has been offered, 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 applicant during the pendency of trial, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), 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, applicant has made out a case for bail.

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

12. Let the **applicant-Rajesh Kumar**, 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.

13. 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

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