

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42865 of 2023

Applicant :- Mahesh Chandra Jaiswal

Opposite Party :- State of U.P.

Counsel for Applicant :- Jitendra Singh

Counsel for Opposite Party :- G.A., Jagdamba Raj Jaiswal

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Jitendra Singh, learned counsel for the applicant, Sri Jagdamba Raj Jaiswal, learned counsel for the first informant and Sri Bade Lal Bind, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Mahesh Chandra Jaiswal, seeking enlargement on bail during trial in connection with Case Crime No. 54 of 2022, under Sections 498-A, 306 I.P.C., registered at Police Station Pheelkhana, District Kanpur Nagar.

4. The FIR of the matter was lodged on 25.05.2022 by Akhilesh Narayan Jaiswal alleging therein that his daughter Pratima Jaiswal was married to the applicant in the year 2011 and after marriage her husband used to torture her and demanded dowry. On 09.10.2021 he received information from the husband of the deceased that his daughter has hung herself. He with the help of Shivam the son of his first wife and other accused persons have committed murder of his daughter.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that although the applicant is the husband of the deceased Pratima Jaiswal but he has been implicated in the present case. It is argued that the FIR was initially lodged under Sections 302, 498-A IPC and Section 3/4 D.P. Act but during investigation Section 302 IPC and Section 3/4 D.P. Act were deleted and Section 306 IPC was added. It is argued that the marriage of the deceased with the applicant was a second marriage. There was no occasion for the applicant to demand any dowry. It is argued that the deceased committed suicide and died which is also suggestive from the postmortem examination report in which the doctor has found a single ligature mark on her body and the cause of death opined is

asphyxia as a result of antemortem hanging. It is further argued that co-accused Shivam has been granted bail by a co-ordinate Bench of this Court vide order dated 12.07.2023 passed in CrI. Misc. Bail Application No. 27331 of 2023 (Shivam Vs. State of U.P.), copy of the order is annexed as annexure 8 to the affidavit. It is further argued that the applicant is aged about 62 years and suffering from various diseases. Para 19 of the affidavit has been placed before the Court. It is argued that there is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased. The applicant has no mens-rea at all. There is no overt act whatsoever of the applicant which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence. He further argued that the applicant has no criminal history as stated in para 20 of the affidavit and is in jail since 20.04.2023.

6. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that the applicant is the husband of the deceased. It is argued that the FIR was lodged as a zero at Police Station Farenda, District Maharajganj which was subsequently transferred to Kanpur Nagar. It is argued that the applicant is named in the FIR and there are allegations against him.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the marriage of the deceased with the applicant was solemnized around 11 years back. The said marriage was a second marriage of the applicant. The FIR was initially lodged under Sections 302, 498-A IPC and Section 3/4 D.P. Act but during investigation Section 302 IPC and Section 3/4 D.P. Act were deleted and Section 306 IPC was added. There is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased. The applicant has no mens-rea at all. There is no overt act whatsoever of the applicant which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence. Co-accused Shivam has been granted bail.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant **Mahesh Chandra Jaiswal**, be released on bail in the aforesaid case crime number on 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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.

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is ***allowed***.

Order Date :- 7.11.2023/M. ARIF

(Samit Gopal, J.)