

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41536 of 2023

Applicant :- Madhu

Opposite Party :- State of U.P.

Counsel for Applicant :- Rama Shanker Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr Rama Shanker Mishra, 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-Madhu seeking her enlargement on bail in Case Crime No. 234 of 2021, under Sections 302, 120-B I.P.C. Police Station- Tilhar, District- Shahjahanpur during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 03.04.2020, a delayed F.I.R. dated 04.04.2021 was lodged by first informant Paramjeet and was registered as Case Crime No. 234 of 2021, under Sections 302, 120-B I.P.C. Police Station- Tilhar, District- Shahjahanpur. In the aforesaid F.I.R. one person namely Mukesh Yadav has been nominated as solitary named accused.

5. After aforementioned F.I.R. was lodged, the Investigating Officer proceed with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Thereafter, the inquest (Panchayatnama) of the deceased was conducted. In the opinion of witnesses of inquest (Panch Witnesses) the nature of death of deceased was categorized as accidental. The cause of death specified was injury sustained in the accident. Subsequent to above, post mortem of the body of deceased was conducted. The autopsy surgeon who conducted autopsy of the body of deceased opined that the cause of death of deceased is coma as a result of ante-mortem head injury. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"1. Contusion 7cm x 3 cm on top of head, 12 cm above Rt. ear.

2. Burn injury present on Rt. side of face including lateral aspect of Rt. side neck x skin to bone deep burn. Blackening present all over the wound and around the wound in area of 30 cm x 22 cm.

3. Abraded contusion 14 cm x 2.5 cm on front of neck 3 cm below Rt. mandible and 2.5 cm below Lt. mandible horizontal placed on section a chymosed skin clotted blood also present underneath.

4. Burn injury multiple upper part of chest, Rt. shoulder, lateral aspect of lower part abdomen and Rt. leg lateral part. varrying sizes 37 cm x 12 cm to smallest 6 cm x 3 cm line of redness present between burnt and unburnt area including back of Rt. thigh with Rt. buttock B in no.

5. Abraded contusion 6 cm x 2 cm on lower part of Rt. side chest, 12 cm below Rt. nipple.

6. Multiple abraded contusion present on Rt. arm forearm and Rt. knee and Rt. foots, varrying sizes 6 cm x 2 cm to smallest 1 cm x 1 cm. Total 11 in number."

6. During course of investigation, Investigating Officer, examined the first witness and other witnesses under Section 161 Cr.P.C. The dead body of the deceased was discovered when it was lying in the vehicle Centro Car bearing Registration No. H.R. 26 AY-3922. The said vehicle belongs to named accused Mukesh Yadav. The Investigating Officer made certain recoveries from the vehicle as is evident from the recovery memo copy of which is on record at page 54 of the paper book. The complicity of the present applicant in the crime in question emerged in the statements of Shanti Devi (mother-in-law of applicant), Paramjeet first informant, Prem Pal and Dharm Pal (devar/present applicant). On the basis of above and other material collected by the Investigating Officer he came to the conclusion that complicity of applicant is established in the crime in question. Accordingly, he submitted the charge sheet dated 25.05.2021, whereby, applicant has been charge sheeted under Sections 302, 120-B I.P.C.

7. Learned counsel for applicant contends that though applicant is not named but charge sheeted accused yet she is liable to be enlarged on bail. The applicant is the widow of the deceased. She has been falsely implicated in the crime in question. The complicity of present applicant in the crime in question has emerged in the statements of the following witnesses: Smt. Shanti Devi, Dharmpal.

8. However, the only role assigned to the applicant is that of a conspirator. Conspiracy is a closed door affair and therefore, subject to trial evidence. Further more, the death of the deceased is an accidental death and cannot be attributed to any deliberate act of applicant. Since, applicant is a lady therefore she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C. As such, applicant is liable to be enlarged on bail.

9. Even otherwise, applicant is a women of clean antecedents inasmuch as she has no criminal history to her credit except the present one. Applicant is in jail since 06.04.2021. As such she has undergone more than seven 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, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He therefore, contends 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.

10. Per contra, the learned A.G.A has opposed the present application for bail. He submits that since applicant is a charge sheeted accused, therefore she does not deserve any indulgence by this Court. However, he could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused-applicant and accusation made coupled with the fact that the applicant is the widow of the deceased, applicant being a lady is clearly entitled to the benefit of provisions contained in proviso to Section 437 Cr.P.C., applicant is not named in the F.I.R., complicity of applicant has emerged in the crime in question in the statement of two witnesses namely Smt. Shanti Devi and Dharmpal, as per the statement of aforesaid witnesses, the only role assigned to the applicant is that of a conspirator, conspiracy is a closed door affair, therefore, subject to trial evidence, further more, the death of the deceased is an accidental death and cannot be attributed to any deliberate act of applicant, inspite of the fact that the charge sheet has been submitted, 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 clean antecedents of 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 comment on the merits of the case, applicant has made out a case for bail.

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

13. Let the applicant- **Madhu**, be released on bail in aforesaid case crime number on her 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.

14. 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 :- 28.11.2023

Imtiyaz