

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41504 of 2023

Applicant :- Smt. Rampyari

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudhir Dixit, Ashish Kumar Maurya, Utkarsh Dixit

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sudhir Dixit, 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-Smt. Rampyari, seeking her enlargement on bail in Case Crime No. 42 of 2023, under Sections 498-A, 304-B, 323 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Ugheti, District-Badaun during the pendency of trial.
4. Record shows that marriage of Sushil (son of applicant) was solemnized with Kusum on 22.07.2019. From the aforesaid wedlock, 2 children were born. However, just after expiry of a period of 3 years and 8 months from the date of marriage of the son of applicant, an unfortunate incident occurred on 14.03.2023 in which, the daughter-in-law of applicant namely Kusum died as she committed suicide by hanging herself. It is the case of applicant that the information regarding the said occurrence was given by the husband of deceased to her in-laws. The said fact is also explicit from the recital contained in the FIR also.
5. Subsequently, Anek Singh (father of the deceased) lodged an FIR dated 14.03.2023 which was registered as Case Crime No. 42 of 2023, under Sections 498-A, 304-B, 323 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Ugheti, District-Badaun. In the aforesaid FIR, 3 persons namely - (1) Sushil (husband), (2) Rampyari (mother-in-law) and (3) Munnalal (father-in-law) of the deceased have been nominated as named accused.
6. Learned counsel for applicant submits that though applicant is the mother-in-law of deceased, a named and charge sheeted accused inasmuch as, the charge sheet has been submitted against 2 of the named accused i.e. Sushil (husband) and Rampyari (mother-in-law) of the deceased yet she is liable to be enlarged on bail. Applicant is a lady, therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C. 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 further explicit from the fact that the Autopsy Surgeon, who conducted autopsy of the body of deceased, did not find any other external ante-mortem injury on the body of deceased except the ligature mark. Applicant being the mother-in-law of deceased cannot be said to be the beneficiary of the alleged demand of dowry. The husband of deceased i.e. the son of the applicant is already languishing in jail. Attention of the Court was then invited to the FIR and on basis thereof, he contends that allegations made in the FIR with regard to demand of additional dowry to the tune of Rs. 1.25 lacs and a motorcycle by the named accused, and commission of cruelty upon deceased as demand of additional dowry was not fulfilled are false and concocted. The same are vague and bald allegations inasmuch as, the same are devoid of material particulars. Attention of Court was then invited to the statement of first informant recorded under Section 161 Cr.P.C., copy of which is on record as Annexure-4 to the affidavit filed in support of the present application for bail. With reference to above, the learned counsel for applicant contends that the first informant in his aforesaid statement has not explained the allegations made in the IR regarding demand of additional dowry and commission of physical and mental cruelty upon the deceased. Placing reliance the judgment of the 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 in view of above the said allegations are, therefore, liable to be ignored by this Court at this stage.

7. Even otherwise, applicant is a woman of clean antecedents inasmuch as, she has no criminal history to her credit except the present one. Applicant is in jail since 16.03.2023. As such, he has undergone more than 8 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 on the record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he, therefore, submits 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.

8. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is the mother-in-law of deceased, a named/charge sheeted accused, therefore, she does not deserve any indulgence by this Court. The death of the deceased has occurred

just after 3 years and 8 months from the date of her marriage. As the death of deceased has occurred within 7 years of her marriage, and therefore, the same is a dowry death. Applicant is the mother-in-law of deceased and an inmate of the house where the occurrence occurred. As such, 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, the applicant has miserably failed to discharge the said burden up to this stage. As such, 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.

9. 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 since applicant is a lady, therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., the bona-fide of the applicant is further explicit from the fact that except for the ligature mark, no other external ante-mortem injury was found on the body of deceased, the allegations made in the FIR regarding demand of additional dowry to the tune of Rs. 1.25 lacs and a motorcycle are not only false but concocted, the said allegations are vague and bald allegations as they are devoid of material particulars, since allegations 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 have not been substantiated by material particulars, therefore, the same are liable to be ignored by this Court at this stage, in view of the judgment of Supreme Court in **Kahkashan Kausar @ Sonam (Supra)**, applicant is the mother-in-law of the deceased, therefore, prima-facie she cannot be said to be the beneficiary of the alleged demand of dowry, 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), since prima-facie the death of deceased is a suicidal death, therefore the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case, she is convicted, 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.

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

11. Let the **applicant-Smt. Rampyari**, be released on bail in the 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.

12. 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/Vinay