

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41848 of 2023

Applicant :- Mahendra Kumar @ Manaugi

Opposite Party :- State of U.P.

Counsel for Applicant :- Ravi Shankar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ravi Shankar Mishra, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the Court.

3. This application for bail has been filed by applicant-Mahendra Kumar @ Manaugi seeking his enlargement on bail in Case Crime No. 652 of 2022 under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act, Police Station-Handia, District-Prayagraj, during the pendency of trial.

4. It transpires from record that Marriage of applicant Mahendra Kumar @ Manaugi was solemnized with Maneeta Devi in the year 2017. From the aforesaid wedlock two children namely a son Saroj and a daughter Anjali were born. However, just after expiry of a period of five years from the date of marriage of applicant an unfortunate incident occurred in the home of the applicant on 18.10.2022 in which the wife of applicant namely Maneeta Devi died as she committed suicide by hanging herself.

5. Information regarding death of deceased at the police station concerned was given by applicant herself. On the above information, inquest (Panchnama) of the body of deceased was conducted on 18.10.2022. In the opinion of the witnesses of

inquest (Panch witnesses), the nature of death of the deceased was characterised as homicidal and cause of death of deceased was said to be ante-mortem hanging.. Thereafter, post-mortem of the body of the deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of the deceased, the cause of death of deceased was opined as asphyxia as a result of ante-mortem hanging. The Autopsy Surgeon found following ante mortem injuries on the body of the deceased:

1. A ligature mark present all around upper part of neck except 5.0 cm gap on back of neck in width 3.cm ligature mark 5.0 cm below right ear 6cm below chin, and 4c, below left ear except section of ligature mark while glittering and parchment like appearance present.

6. After proceedings of inquest and post-mortem had been undertaken, an F.I.R. dated 20.10.2022 came to be lodged by Badri Prasad (father of the deceased) and was registered as Case Crime No. 652 of 2022 under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act, Police Station-Handia, District-Prayagraj. In the aforesaid F.I.R. seven persons namely Mahendra Kumar @ Manogi, Rajendra, Rajara, Meera Devi, Kaushlya Devi, Mother-in-law and Bablu Yadav have been nominated as named accused.

7. The gravamen of the allegations made in the F.I.R. is to the effect that named accused have caused death of the daughter of first informant on account of non-fulfilment of demand of dowry.

8. After aforementioned F.I.R. was lodged, the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. During course of investigation, he examined the first informant and other witnesses

under Section 161 Cr.P.C., who have substantially supported the F.I.R. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of named accused is fully established in the crime in question. He accordingly submitted the charge-sheet dated .3.02.2023 whereby applicant- Mahendra Kumar W@ Manaugi(husband) and Mahendra Devi, the mother in law of deceased have been charge sheeted under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act .

9. Learned counsel for applicant submits that though applicant is the husband of the deceased, a named as well as charge sheeted accused inasmuch as charge sheet has been submitted against two of the named accused including applicant on 03.02.2023 yet he is liable to be enlarged on bail. With reference to the material on record, he submits that the deceased was a short tempered lady and she has taken the extreme step of terminating her life by hanging herself. Bonafide of the applicant is also explicit from the fact that except for the ligature mark, no other internal or external ante-mortem injury was found on the body of the deceased by the autopsy surgeon. There is no reason to doubt that applicant is guilty. Applicant cannot be said to be the beneficiary of the alleged demand of dowry. No abetment, instigation or conspiracy can be inferred against applicant from the record either. Allegations made in the F.I.R. with regard to demand of additional dowry and commission of physical and mental cruelty upon deceased on account of non-fulfillment of additional demand of dowry are vague and bald allegation as they are devoid of material particulars. As such, the same are liable to be ignored by this Court at this stage in view of the law laid down by Apex Court in **Kahkashan Kausar @ Sonam and others Vs. State of Bihar**

and Others, (2022) 6SCC 599. Learned counsel for applicant further contends that considering the nature of death of deceased, applicant is not liable to be awarded the maximum sentence for an offence under Section 304B I.P.C.

10. Even otherwise applicant is a man of clean antecedents inasmuch he has no criminal history to his credit except the present one. Applicant is in custody since 15.11.2022. As such, he has undergone approximately 11 months of incarceration. The police report (charge-sheet) 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 crystallised. 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 the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

11. Per contra, the learned A.G.A. for State has opposed the prayer for bail. He submits that since the 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 is in unnatural circumstance. The deceased has committed suicide within seven years of marriage and at her matrimonial home. Resultantly, the death of the deceased is a dowry death. Therefore, burden is upon the applicant to explain not only the manner of occurrence but also his innocence in terms of Section 106 and Section 113B of Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. He therefore submits that applicant does not deserve any sympathy of this Court. However, the learned A.G.A. could not dislodge the factual and legal

submissions urged by learned counsel for applicant with reference to the record at this stage.

12. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel for first informant upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that, the Autopsy Surgeon did not find any external or internal ante mortem injury on the body of the deceased except the ligature mark, bonafide of the applicant is also explicit from the fact that immediately after the occurrence, information at the concerned police state was given by applicant himself, the allegation made in the F.I.R. regarding demand of additional dowry and commission of physical and mental cruelty upon deceased on account of non-fulfilment of additional demand of dowry are vague and bald allegation as the same are devoid of material particulars, as such, the same are liable to be ignored at this stage, the judgement of the Supreme Court in **K. Kausar @ Sonam and others(supra)**, 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 stand crystallised, yet in spite of above the learned AG.A. and the learned counsel for first informant could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, the judgement of Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), considering the nature of death of the deceased, the applicant is not liable to be awarded the maximum sentence for an offence under Section 304B I.P.C., the precarious condition of the applicant as the children of applicant are of tender age, therefore

irrespective of the objections raised by the learned A.G.A in opposition to the present application for bail, the clean antecedents of applicant, the period of incarceration undergone, but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

13. Accordingly, present application for bail is **allowed**.

14. Let the applicant- **Mahendra Kumar @ Manaugi** involved in aforesaid case crime number be released on bail 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) Applicant will not tamper with prosecution evidence.

(ii) 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) Applicant will not indulge in any unlawful activities.

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

15. 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 of applicants and send him to prison.

Order Date :- 13.10.2023

YK