

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41511 of 2023

Applicant :- Ajay

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajeev Sawhney, Raju Kumar

Counsel for Opposite Party :- G.A., Lal Bahadur

Hon'ble Rajeev Misra, J.

1. Heard Mr. Rajeev Sawhney, the learned counsel for applicant, the learned A.G.A. for State and Mr. Ram Sajeewan Prajapati, Advocate, holding brief of Mr. Lal Bahadur, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Ajay seeking his enlargement on bail in Case Crime No. 246 of 2023, under Sections 498-A, 304-B, 201 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kiratpur, District-Bijnor during the pendency of trial.

4. At the very outset, the learned counsel for applicant contends that this Court vide order dated 25.08.2023 passed in Criminal Misc. Bail Application No. 35041 of 2023 (Munni Devi Vs. State of U.P.) has granted bail to co-accused Munni Devi (mother-in-law of the deceased). On the above premise, he submits that in view of above and for the facts and reasons recorded in the aforementioned bail order, applicant is also liable to be enlarged on bail on the ground of parity.

5. Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is the husband of the deceased, he cannot claim parity with the mother-in-law of deceased. The co-accused Munni Devi being a lady was entitled to the benefit of Section 437 Cr.P.C. Attention of Court was invited to the recital contained in paragraph 8 of the above order dated 25.08.2023. For ready reference, the same is reproduced hereinunder:-

"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 10.06.2023. As such, she has undergone more than 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. Applicant cannot be said to be the beneficiary of the alleged demand of additional dowry. The husband of the deceased i.e. the son of the applicant is already languishing in jail. There is delay of 30 days in lodging the FIR. The delay in lodging the FIR has not been sufficiently explained. With reference to the judgment of the Supreme Court in P. Rajagopal And Ors. Vs. The State of Tamil Nadu, 2019(5) SCC 403 (paragraph 8), the learned counsel for applicant contends that since the delay in lodging the FIR has not been explained, the prosecution of the applicant itself cannot be maintained. The body of the deceased was cremated in the presence of the family members of the deceased. This fact is clearly evident from the statement of the witnesses examined under Section 161 Cr.P.C. namely - Gyan Singh, Nikhil, Updesh, Rampal Singh, Nakul, Sukhdev Singh and Others. On the above premise, he 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."

6. According to the learned A.G.A. and the learned counsel representing first informant, the recital occurring in the aforesaid paragraph to the effect - ***"This fact is clearly evident from the statement of the witnesses examined under Section 161 Cr.P.C. namely - Gyan Singh, Nikhil, Updesh, Rampal Singh, Nakul, Sukhdev Singh and Others."*** is factually incorrect.

7. Attention of the Court was then invited to the statement of these witnesses, which are on record page 30 onwards of the paper book. It is thus urged that all these witnesses mentioned in paragraph 8 of the order dated 25.08.2023 were present at the time of funeral of deceased. However, according to the statements of these witnesses, the family members of deceased including the father of deceased arrived after the funeral was over. It is then contended that even in a case of suicidal death, information is required to be given at the concerned Police Station in terms of Section 174 Cr.P.C. However, no such information was given by the applicant or any of his family members at the concerned Police Station and the dead body of deceased was disposed off. On account of above, neither the inquest nor the post mortem of the body of deceased could be conducted. As such, neither the nature of death nor the cause of death of deceased could be ascertained. The occurrence has occurred within 7 years of marriage i.e. just after expiry of 3 years and 2 months from the date of her marriage. Applicant is the husband of deceased and an inmate of the house. 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. As such, no sympathy be shown by this Court in favour of

applicant.

8. When confronted with above, the learned counsel for applicant could not overcome the same.

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, complicity of accused, accusations made coupled with the fact that the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail

10. As a result, present application for bail fails and is liable to be rejected.

11. It is accordingly **rejected**.

Order Date :- 28.11.2023

Vinay