

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42579 of 2023

Applicant :- Alok Kumar Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar, Abhishek Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sanjay Kumar, 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-Alok Kumar Yadav, seeking his enlargement on bail in Case Crime No. 60 of 2022, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Sikrara, District-Jaunpur during the pendency of trial.
4. Record shows that marriage of applicant was solemnized with Pooja on 28.11.2019. However, just after expiry of a period of 2 years and approximately 4 months from the date of marriage of the applicant, an unfortunate incident occurred on 24.03.2022 in which, the wife of applicant died as she committed suicide by hanging herself.
5. It is the case of applicant that immediately after the occurrence, the information regarding the same was given to Mohandas (Mama of the deceased). Thereafter, aforesaid person informed the family members of the deceased regarding the occurrence. Subsequently, an FIR dated 24.03.2022 came to be lodged by Ashwani Kumar Yadav (brother of the deceased) and was registered as Case Crime No. 60 of 2022, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Sikrara, District-Jaunpur. In the aforesaid FIR, 5 persons namely - (1) Alok Kumar Yadav, (2) Amrita Devi, (3) Kailash, (4) Meeta Devi and (5) Bharatlal Yadav have been nominated as named accused.
6. The gravamen of the allegations made in the FIR apart from the date and factum of the marriage is to the effect that named accused

committed physical and mental cruelty upon the deceased in pursuit of the demand of additional dowry and a motor cycle (bullet). Ultimately, the sister of the first informant was put to death by named accused.

7. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The inquest (Panchayatnama) of the body of deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as suicidal. Thereafter, the post mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of the deceased was Asphyxia as a result of ante-mortem hanging. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. An incomplete Ligature mark present around neck between chin and thyroid cartilage obliquely placed brown blackies colour. Size 25 cm x 2 cm and 6 cm gap left side back of neck. Situated 7 cm from right ear, and five cm below from left ear. On cut section ligature mark is ecchymosis hard leathery and parchment like seen. Postmortem levedity present over both upper limb, chest abdomen and back."

8. During course of investigation, Investigating Officer recovered a suicide note of the deceased, copy of which is on record at page 31 of the paper book. Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of applicant is fully established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 20.06.2022 against Kailash and Bharat followed by supplementary charge sheet dated 31.01.2023 whereby Alok, Amrita and Meeta have been charge sheeted under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act.

9. Learned counsel for applicant contends that though applicant is the husband of the deceased, a named as well as charge sheeted accused, yet, he is liable to be enlarged on bail. The marriage of the applicant with the deceased was solemnized on 28.11.2019. However, the deceased was a short tempered lady and she took the extreme step of terminating her life by committing suicide. The bona-fide of the applicant is explicit from the fact that the Autopsy

Surgeon, who conducted the autopsy of the body of deceased did not found any grievous or fatal ante-mortem injury on the body of deceased, except the ligature mark. The recital contained in the FIR is belied by the allegations made in the suicidal note of the deceased. He has then drawn a parallel between the two and on basis thereof, he contends that in the suicide note of the deceased, there is no allegation regarding commission of physical and mental cruelty upon the deceased on account of non fulfillment of additional demand of dowry. Explaining the bona-fide of the applicant, he submits that the applicant is in service inasmuch as, he is working as Sepoy in the Indian Army. According to the learned counsel for applicant, the cause of death is the sale deed which was got executed by the applicant in the name of his mother and not in his personal name.

10. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 24.02.2023. As such, he has undergone more than 7 and 1/2 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. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he submits 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. has opposed the prayer for bail. He submits that since applicant is the husband of the deceased, a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Attention of the Court was then invited to the fact that the deceased died within 7 years of marriage and at her marital home. As such, the death of deceased is a dowry death. Moreover, the death of deceased is highly unnatural. The deceased was a young lady aged about 25 years. Learned A.G.A., however, fairly submits that in the entire case diary, there is no such material to establish that the applicant was present at the time and place of occurrence. He, however, contends that 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.

12. 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 prima-facie the death of deceased is a suicidal death, except for the ligature mark, no other external or internal ante-mortem injury was found on the body of deceased, applicant is working as a Sepoy in the Indian Army, therefore, the allegations made in the FIR regarding demand of motorcycle (Bullet) is not worthy of reliance inasmuch as, it is devoid of material particulars, with regard to the manner of demand of dowry and also the manner in which, physical and mental cruelty was committed upon the deceased, as per the suicidal note of the deceased, no allegation regarding demand of additional dowry and commission of physical and mental cruelty upon deceased is pointing out, as per the allegation made in the suicidal note, the case in hand is a case of suicidal death, however, the learned A.G.A. could not establish from the record the element of instigation, abetment or conspiracy against the applicant, the applicant is an army personnel, the learned A.G.A. could not point out from the record that applicant was present at the time and place of occurrence, in the absence of above, the prosecution has failed to discharge its primary burden regarding the presence of the applicant at the time and place of the occurrence, in view of above, the reciprocal liability of the applicant to explain the manner of occurrence on account of being an inmate of the house does not arise, 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)**, 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.

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

14. Let the **applicant-Alok Kumar Yadav**, be released on bail in the aforesaid case crime number 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) 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.

15. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his 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 :- 16.10.2023

Vinay