

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41695 of 2023

Applicant :- Amarpal

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Shukla,Vikas Srivastava

Counsel for Opposite Party :- G.A.,Gyanendra Kumar Mishra,Ramesh Kumar Mishra

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41859 of 2023

Applicant :- Smt Rajesh @ Rakesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Shukla,Vikas Srivastava

Counsel for Opposite Party :- G.A.,Gyanendra Kumar Mishra,Mohd. Monis,Ramesh Kumar Mishra

Hon'ble Rajeev Misra,J.

1. Heard Mr. Rajesh Dutt Pandey, the learned counsel for applicant, the learned A.G.A. for State and Mr. Gyanendra Kumar Mishra alongwith Mr. Ramesh Kumar Mishra, the learned counsel representing first informant.

2. Perused the Court.

3. The compliance affidavit filed by learned A.G.A. in Criminal Misc. Bail Application No. 41859 of 2023 in Court today is taken on record.

4. These applications for bail have been filed by applicants- Amarpal and Smt Rajesh @ Rakesh seeking their enlargement on bail in Case Crime No. 311 of 2023 under Sections 498A, 304B I.P.C. and Section 3/4 D. P. Act, Police Station-Khatauli, District-

Muzaffarnagar, during the pendency of trial.

5. Record shows that marriage of Vikul, son of applicants was solemnized with Nishu (sister of first informant) on 21.02.2019. However, just after expiry of a period of 4 years, 5 months and 6 days from the date of marriage of son of first informant, an unfortunate incident occurred on 22.07.2023 in which daughter-in-law of applicants namely Nishu died as she is alleged to have consumed some poisonous substance. It is the case of the applicant that immediately after the occurrence, the victim was rushed to the Hospital. However, ultimately she succumbed to the poisonous substance consumed by her on 27.07.2023 itself. Thereafter information regarding the death of deceased was given by the husband of the deceased to his in-laws. Subsequent to above, Gaurav brother of the deceased lodged an F.I.R. dated 27.07.2023, which was registered as Case Crime No. 311 of 2023 under Sections 498A, 304B I.P.C. and Section 3/4 D. P. Act, Police Station-Khatauli, District-Muzaffarnagar. In the aforesaid F.I.R. five persons namely Vikul, Vipul, Rajesh and Amarpal (applicants herein) as well as Vaishali have been nominated as named accused.
6. The gravamen of the allegations made in the F.I.R. is to the effect that marriage of sister of first informant, namely Nishu was solemnized with Vikul in the year 2019. At the time of marriage sufficient amount of goods and dowry were given. However, subsequently, additional demand of dowry was made. As the said demand of dowry was not fulfilled, physical and mental cruelty was committed upon the sister of first informant. Ultimately, the sister of first informant was put to death. The F.I.R. concludes with the recital that information regarding death of deceased was given by the brother-in-law of the first informant.
7. 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. Thereafter, inquest (Panchnama) of the body of deceased was conducted 28.07.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was categorized as homicidal and the cause of death of deceased was specified as beating and administering poison. Subsequent to above, 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 could not be ascertained. Therefore viscera of the deceased was preserved. The Autopsy Surgeon, however, found following ante mortem injuries on the body of the deceased:

1. Bluish contusion of size 13 cm x 6 cm present on Lt. thigh, 12 cm above from knee joint.

ii. Bluish contusion of size 18 cm x 5 cm present on Rt. thigh 14 cm above from knee joint.

iii. Bluish contusion of size 6cm. x 4 cm present on Rt elbow.

iv. Bluish contusion of size 5cm. x 2 cm present on Lt. knee joint.

8. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C.. Witnesses so examined 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 three of the named accused namely Vikul (husband), Amarpal (father-in-law) and Smt. Rajesh (mother-in-law) is fully established in the crime in question. He accordingly submitted the charge-sheet dated 20.09.2023 whereby above named accused have been charged sheeted under Sections 498A, 304B I.P.C. and Section 3/4 D. P. Act, whereas the other

named accused have been exculpated.

9. Learned counsel for applicant contends that the applicants are father-in-law and mother-in-law of the deceased. Though the applicants are named and charged sheeted accused, yet they are 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 consuming some poisonous substance. Bonafide of applicant is also explicit from the fact that no grievous or fatal external ante-mortem injury was found on the body of the deceased. Applicants being father-in-law and mother-in-law of the deceased cannot be said to be the beneficiary of the alleged demand of dowry. The husband of the deceased is already languishing in jail. No abetment, instigation or conspiracy can be inferred against applicants from the record either. Allegations made in the F.I.R. regarding demand of additional dowry and commission of physical and mental cruelty upon deceased on account of non-fulfillment of additional demand of dowry are false and concocted. Furthermore, they are vague and bald allegation as they have not been substantiated by material particulars upto this stage. Referring to the statement of first informant (brother of the deceased) recorded under Section 161 Cr.P.C., copy of which is on record at page 39 of the paper book, learned counsel for applicants contends that even in the aforesaid statement the first informant has not explained the allegations made in the F.I.R. Moreover, the said statement clearly shown that amount was credited in the account of the husband of deceased. He therefore contends that allegations made in the F.I.R. regarding demand of additional dowry and commission of cruelty upon deceased have not been substantiated by material particulars therefore the same is liable to be ignored

upto this stage. According to learned counsel for applicant though F.I.R. is not the encyclopedia of the prosecution case, but it must disclose the basic prosecution case. In support of above he has relied upon the following judgements of Supreme Court:

i. Manoj and others Vs. State of Maharashtra, (1999) 4 SCC 268,

ii. Subhash Kumar Vs. State of Uttarakhand, (2009) 6 SCC 641,

iii. Achhar Singh Vs. State of M.P., (2021) 5 SCC 543

10. No attempt has been made by first informant to explain the omission in the F.I.R. in his statement under Section 161 Cr.P.C. As such, the same are liable to be ignored at this stage. Placing reliance upon the judgement of Apex Court in **Kahkashan Kausar @ Sonam and others Vs. State of Bihar and Others, (2022) 6SCC 599**, learned counsel for applicants submits that since the allegations made in the F.I.R. regarding demand of additional dowry and commission of cruelty upon the deceased have not been substantiated by material particulars, therefore, the same are liable to be ignored by this Court at this stage.

11. Even otherwise applicants are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants are in custody since 30.07.2023. As such, they have undergone more than four month of incarceration. 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 applicants stands crystallised. Upto this stage, no such circumstance has emerged from the record necessitating the custodial arrest of applicants during the pendency of trial. Referring to the judgement of Apex Court in **Sumit Subhashchandra Gangwal Vs. State of**

Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5), the learned counsel for applicants thus submit that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

12. Per contra, the learned A.G.A. for State and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that since the applicants are the father-in-law and mother-in-law of the deceased, named and charge sheeted accused therefore they do not deserve any indulgence by this Court. According to the learned counsel for first informant, the deceased was a young lady aged about 26 years, who has died in unnatural circumstance. Occurrence has taken place in the house of applicants and within seven years of the marriage of the deceased. Therefore the death of the deceased is a dowry death. By reason of above, the burden is upon the applicants to not only explain the manner of occurrence but also their innocence in terms of Sections 106 and 113B of Evidence Act. However, the applicants have miserably failed to discharge the said burden upto this stage. They therefore submit that applicants do not deserve any sympathy of this Court. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

13. 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 applicant Smt. Rajesh isa lady therefore she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., applicants are the father-in-law and mother-

in-law of the deceased therefore prima facie they cannot be said to be the beneficiary of the alleged demand of additional dowry, allegations made in the F.I.R. regarding demand of additional dowry and commission of cruelty upon the deceased have not been substantiated with material particulars, therefore the same are liable to be ignored by this Court at this stage in view of law laid down by Apex Court as noted herein above, departure has been made by first informant in his statement under Section 161 Cr.pc. from the prosecution story as unfolded in the F.I.R., departure so made remains unexplained, though the F.I.R. is not the encyclopedia of prosecution case, but it must disclose the basic prosecution case, omission in the F.I.R. regarding new facts emerging in the statement of the first informant remain unexplained upto this stage, since the allegations made in the F.I.R. regarding demand of additional dowry and commission of cruelty upon the deceased on account of non-fulfillment of dowry have not been substantiated by material particular, therefore, same are liable to be ignored upto this stage in view of law laid down by Apex Court in **Kahkashan Kausar @ Sonam and others (supra)**, no such circumstance has emerged on the record on the basis of which it can be conclusively concluded that the applicants have abetted, instigated or conspired in the commission of the crime or the deceased committed suicide on account of an immediate act of applicants, bonafide of applicants is however explicit from the fact that no grievous or fatal external ante mortem injury was found on the body of the deceased, 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 stand crystalized, 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 the Supreme Court in **Sumit Subhashchandra Gangwal (supra)**, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to present application for bail but without expressing any opinion on the merits of the case, applicants have made out a case for bail.

14. Accordingly, present applications for bail are **allowed**.

15. Let the applicants-**Amarpal and Smt Rajesh @ Rakesh** involved in aforesaid case crime number be released on bail on their furnishing a personal bond each 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) Applicants will not tamper with prosecution evidence.

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

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

16. 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 them to prison

Order Date :- 4.12.2023

YK