

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42132 of 2023

Applicant :- Shiv Kumari Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Ganga Bhushan Mishra, Santosh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Ganga Bhushan Mishra, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Shiv Kumari Devi seeking her enlargement on bail in Case Crime No.195 of 2023, under Sections 323, 504, 506, 304 IPC, police station Sahatwar, district Ballia, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 09.07.2023, a prompt FIR dated 09.07.2023 was lodged by first informant, namely, Smt. Poonam Devi (daughter-in-law of the deceased) and was registered as Case Crime No.0195 of 2023, under Sections 323, 504, 506 IPC, police station Sahatwar, district Ballia. In the aforesaid FIR, four persons, namely, Bablu Ram; Shiv Kumari Devi; Amar Ram and Neetu Devi have been nominated as named accused.

It is pertinent to mention here that after the FIR was lodged, injured Moti Chand/Moti Lal Ram succumbed to the injuries sustained by him on the same day i.e. 09.07.2023 at 07.15 P.M. Consequently, the case was converted under Section 304 IPC.

Subsequent to the aforesaid FIR, inquest (Panchayatnama) of the deceased was conducted on 10.07.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was categorized as homicidal. However, the exact cause of death of the deceased could not be specified. Thereafter, the post-mortem of body of the deceased was conducted. The autopsy surgeon, who conducted autopsy of the body of deceased, found following ante-mortem injuries on the body of deceased :-

"Ante-mortem Injury :

1. Contusion size 8 cm x 7 cm on left tempo-parital region on dissection heamatoma present below scalp at places.

2. Contusion size 2.5 cm x 0.5 cm on left forearm antero lateral on mid."

In the opinion of the autopsy surgeon, the cause of death of the deceased was shock and asphyxia as a result of ante-mortem injuries.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. Investigating Officer examined various witnesses including the first informant and recorded their statements under Section 161 CrPC. Witnesses so examined have substantially supported the F.I.R. On the basis of above and other material collected by the Investigating Officer during the course of investigation, he came to the conclusion that complicity of all the named accused is established in the crime in question. He, accordingly, submitted charge-sheet dated 17.08.2023, whereby all the named accused have been charge-sheeted under Sections 323, 504, 506, 304 IPC.

Learned counsel for applicant contends that though the applicant is a named/charge-sheeted accused yet he is liable to be enlarged on bail. He further contends that since the applicant is a lady therefore she is entitled to the benefit of the provisions contained in proviso to Section 437 CrPC.

It is next contended that the occurrence giving rise to the present criminal proceeding has occurred on account of grave and sudden provocation and not on account of any calculated mens-rea or pre-planned act of the applicant. Therefore, the present case is a case of grave and sudden provocation and is covered under the fourth exception to Section 300 IPC. As such, the offence complained of would not travel beyond Section 304 Part II IPC. Resultantly, the death of the deceased shall be culpable homicide not amounting to murder.

Learned counsel for applicant has then invited the attention of the Court to the post-mortem report of the deceased and on basis thereof he contends that deceased has sustained two contusions on his person. With reference to above, he therefore submits that there cannot be any intention on the part of applicant to commit death of the deceased.

Even otherwise, the applicant is a woman of clean antecedents having no criminal history to her credit except the present one. The applicant is in jail since 11.07.2023. As such, she has undergone more than three months of incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicant, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged

necessitating the custodial arrest of applicant during the pendency of trial. It is thus contended 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.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. Since applicant is a charge-sheeted accused therefore, no indulgence be granted by this Court in favour of applicant. He submits that considering the nature and gravity of the offence and coupled with the fact that crime committed by the accused is joint and common therefore, the same is incapable of being separation or segregation. As such, no sympathy be shown by this Court in favour of applicant. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that since the applicant is a lady therefore she is entitled to the benefit of the provisions contained in proviso to Section 437 CrPC, the deceased had sustained only two injuries on his person which are contusions, as per the medical opinion it cannot be said that the intention of the applicant was to cause death of the deceased, the present case is a case of grave and sudden provocation and the same is not the outcome of any calculated mens-rea or pre-planned act of the applicant and other co-accused, in view of above the case in hand is covered under the fourth exception to Section 300 IPC, the police report under Section 173 (2) CrPC i.e. charge-sheet having been filed therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized yet, inspite of above the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of the applicant during the proceeding of trial, the clean antecedents of the applicant, the period of incarceration undergone, therefore irrespective of objection 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, the applicant has made out a case for bail.

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

Let the applicant **Shiv Kumari Devi**, involved in aforesaid case crime number, be released on bail on her furnishing a personal bond with 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 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 her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure 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 her, in accordance with law, under section 174-A I.P.C.

(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 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.

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 :- 30.10.2023.

Rks.