

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42027 of 2023

Applicant :- Suraj Patwa

Opposite Party :- State of U.P.

Counsel for Applicant :- Sumit Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Sumit Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Suraj Patwa, seeking his enlargement on bail in Case Crime No. 237 of 2020, under Sections 498-A, 304-B, 201 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Brijmanganj, District-Maharajganj during the pendency of trial i.e. Sessions Trial No. 87 of 2021 (State Vs. Suraj Patwa and Others), under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Brijmanganj, District-Maharajganj now pending in the Additional Sessions Judge, Court No.-I, Maharajganj.

4. The first bail application of applicant was rejected by this Court vide order dated 10.02.2023 passed in Criminal Misc. Bail Application No. 12095 of 2021 (Suraj Patwa Vs. State of U.P.). For ready reference, the order dated 10.02.2023 is reproduced hereinunder:-

"This application has been filed with a prayer to release the accused applicant on bail in Case Crime No. 237 of 2020, under Section 498-A, 304-B and 201 of I.P.C. and Section 3/4 of D.P. Act, Police Station Brijmanganj, District Maharajganj.

Heard Mr. Rajeev Chaddha, learned counsel for the accused/applicant and Mr. Alok Kumar Tripathi, learned A.G.A. for the State-respondent and perused the material on record.

Learned counsel for the accused/applicant submitted that accused/applicant is the husband of the deceased and he has no concern with the crime. The deceased committed suicide, as the cause of death is Asphyxia, as a result of ante-mortem hanging. Earlier the FIR was lodged against many persons

and chargesheet was submitted only against three persons. He further submitted that the accused applicant is languishing in jail since 21.10.2020, so the accused applicant should be enlarged on bail.

Contrary to it, learned A.G.A. appearing on behalf of the State-respondent vehemently opposed the bail application of the accused applicant and submitted that deceased died within seven years of her marriage in her matrimonial home and in the injury report contusion has been found on the vital part of the body of the deceased i.e. chest. There are allegations of demand of dowry made in the FIR and she died an unnatural death. Therefore, the accused applicant should not be enlarged on bail.

Considered the rival submissions and perused the material available on record.

It transpires from the record that accused/applicant is the husband of the deceased. Deceased died in her matrimonial home an unnatural death within seven years of her marriage and there are allegations in the FIR of harassment and torture for non-fulfilment of the demand of dowry. In the postmortem report contusion was found on the vital part of the body of the deceased. The accused/applicant is the husband of the deceased, who had a greater responsibility to safeguard the life of his wife. Hence there appears no reason to enlarge the accused/applicant Suraj Patwa on bail.

Hence the bail application of the accused/applicant deserves dismissal and is dismissed accordingly.

However, the learned lower court is directed to expedite the trial and conclude the same expeditiously keeping in view the provisions of Section 309 Cr.P.C."

5. Learned counsel for applicant contends that prior to the order dated 10.02.2023, the charge sheet was submitted against applicant and others on 17.11.2020 upon which, cognizance was taken by concerned Magistrate vide Cognizance Taking Order dated 14.12.2020. Thereafter, the case was committed to the Court of Sessions vide Committal order dated 17.02.2021. Charges were framed against charge sheeted accused vide framing of charge order dated 19.07.2022. However, after expiry of a period of more than 1 year and 1 month from the date of framing of charge order dated 19.07.2022, PW-1 Rajkumar i.e. first informant deposed before court below. On the above premise, he submits that the trial is proceeding at a snail's pace. It is then contended by the learned counsel for applicant that since applicant is in custody, therefore, he cannot be said to be responsible for the delay in conclusion of trial. Attention of the Court was then invited to the judgment of Supreme Court in **A.R. Antulay Vs. R.S. Nayak, 1992 (1) SCC 225** and on basis thereof, he contends that right to speedy trial is a fundamental right of an accused. Since on account of lackadaisical

approach of the prosecution, aforementioned fundamental right of the applicant has been infringed, therefore, applicant is liable to be enlarged on bail.

6. 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 21.10.2020. As such, he has undergone more than 3 years and 1 month 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 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.

7. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is the husband of deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The deceased was a young lady aged about 26 years whose death has occurred in unnatural circumstance. The death of deceased has occurred just after 2 years from the date of her marriage. As such, the same is a dowry death. By reason of above, the burden is upon the applicant to not only explain the manner of occurrence but also his innocence. However, the applicant has miserably failed to discharge the said burden up to this stage. He, therefore, 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.

8. 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 there is delay in the proceedings of trial, since applicant is in custody, therefore, he cannot be held responsible for the delay in the conclusion of the trial, the right to speedy trial is a fundamental right of an accused, the judgment of the Supreme Court in **A.R. Antulay (Supra)**, prima-facie the first informant is himself responsible for the delay in the conclusion of the trial inasmuch as, the first informant appeared before court below for giving his evidence after 1 year and 1 month from the date of framing of charge order dated 19.07.2022, the death of the deceased is a suicidal death, the applicant is not liable to be

awarded the maximum sentence under Section 304-B IPC in case of conviction, 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.

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

10. Let the applicant-Suraj Patwa, 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.

11. 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 :- 4.12.2023

Vinay