

Court No. - 93

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41991 of 2023

Applicant :- Chand Babu

Opposite Party :- State of U.P.

Counsel for Applicant :- R.B. Sahai

Counsel for Opposite Party :- G.A.,Shiv Kumar Singh

Hon'ble Manoj Bajaj,J.

Applicant-Chand Babu has filed this second application under Section 439 Code of Criminal Procedure for grant of regular bail, during the pendency of trial in Case Crime No. 65 of 2023, registered under Sections 147, 498-A, 504, 323, 328 and 120-B I.P.C., Police Station Mauranipur, District Jhansi. The applicant is in custody since his arrest i.e. on 12.4.2023.

The above F.I.R. was lodged at the instance of complainant namely, Mehnaj, who stated that she was married on 15.11.2008 with Shahid Khalifa S/o Vaseer Khalifa according to Muslim Rites and Rituals and out of this wedlock, three children namely, Aneesh (12 years), Aahil (6 years) and Arshad (5 years) were born. Complainant's husband Shahid Khalifa, Tanay Baseer, Naseer Khalifa S/o Ramjan (father-in-law) and his sons Chand Babu, Waseem @ Pange and Smt. Yasmeen W/o Chand Babu were continuously attempting to evict the complainant

from the house, but in order to maintain the family, she kept on bearing all their maltreatments. On 2.2.2023 at around 12:00 after noon, the accused forcibly entered her room and started abusing her and asked her to leave the house. When complainant resisted and pleaded that she is wife of Shahid Khalifa and having three children would be left at lurch, failed to prevent the accused, who immediately resorted to violence and caused injuries to her. Meanwhile, accused-Chand Babu brought a dye and forcibly administered to the complainant, who initially resisted, but Yasmeen and Shahid Khalifa caught hold of her by hands and she was made to consume the dye. Upon hearing her cries, the neighbours arrived at the spot and later on, the victim was taken to the hospital at Mauranipur, from where she was referred to the hospital Jhansi. On these broad allegations, the above F.I.R. was registered against accused persons, for the alleged commission of offences punishable under Sections 147, 498-A, 504, 323, 328 and 120-B I.P.C.

Learned counsel for the applicant has submitted that applicant has been falsely implicated in this case and there is no evidence to suggest the alleged commission of offence. He submits that the victim was residing in a joint family and as per her own statement, the alleged substance was consumed by victim voluntarily. Learned counsel for applicant has referred to the bail order dated 26.7.2023 to contend that the co-accused of the applicant have already

been extended the concession of regular, therefore, on the ground of parity, the applicant also deserves the similar concession. He submits that since the investigation of the case is complete and the applicant is presently confined in judicial custody, therefore, his further detention behind the bars may not be necessary. He prays for bail.

The prayer is opposed by learned A.G.A., who is assisted by Sri Shiv Kumar Singh, learned counsel for the complainant, who have argued that the marriage of the victim with her husband was solemnized in the year 2008, and it is a case where she has clearly stated that she kept on tolerating all their cruelty in order to keep the family intact because of her three children. According to them, evidence collected during the investigation is strong enough to show the involvement of the accused in the crime, therefore, considering the nature of the offence, the applicant does not deserves the concession of regular bail.

Upon hearing the learned counsel for the parties and considering the submissions, it comes out that according to the prosecution, applicant had brought the poisonous substance (dye) and the same was administered to the victim. During the course of hearing, learned A.G.A. has produced the medical evidence and the report dated 24.2.2023 by the JRENT reveals that on examination of the victim, it was found that there was swelling and tenderness on the face of the victim. Apart from this, it also

contains the alleged history of assault as narrated by the victim, therefore, at this stage, the argument advanced by the learned counsel that it was a voluntary consumption of poisonous substance by the victim is not worth acceptance as the trial is yet to commence and the prosecution is yet to lead its evidence. Concededly, after this occurrence, the victim remained in hospital for seven days.

Further, the reliance placed upon by the learned counsel to the bail order granted to the other co-accused is of no help to him, as the case of the applicant is distinguishable and stands on different footings.

Thus, considering the seriousness of the offence as well as the stage of trial and the fact that the material witnesses are yet to be examined, this Court without meaning any expression of opinion on the merits of the case, is not inclined to extend the concession of regular bail to the applicant, at this stage.

Dismissed.

Order Date :- 21.11.2023

P.S.Parihar