

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42118 of 2023

Applicant :- Dharmendra

Opposite Party :- State of U.P.

Counsel for Applicant :- A.Z.Khan

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Supplementary affidavit filed by the learned counsel for applicant in Court today is taken on record.

Heard Mr. A.Z. Khan, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Dharmendra seeking his enlargement on bail in Case Crime No.670 of 2021, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Deoband, district Saharanpur, during the pendency of trial i.e. Sessions Trial No.1048 of 2022 (State Vs. Dharmendra and others), under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act pending in the Court of Additional Sessions Judge, Court No.11, Saharanpur.

Perused the record.

Record shows that the marriage of applicant Dharmendra was solemnized with Priyanka @ Gudia (daughter of first informant) on 02.03.2019 in accordance with Hindu rites and custom. However, Just after expiry of a period of two years and seven months from the date of marriage of the applicant, an unfortunate incident occurred on 14.11.2021 in which the wife of applicant died as she consumed some poisonous substance. The information regarding aforesaid incident was given by the police Van PRV 977 at the concerned police station. On the above information, the inquest (Panchayatnama) of the deceased was conducted on 14.11.2021. In the opinion of the witnesses of inquest (Panch witnesses), neither the nature of death of the deceased could be categorized nor the cause of death could be specified. Subsequently, the post-mortem of the body of deceased was conducted. In the opinion of autopsy surgeon, the cause of death of the deceased was asphyxia as a result of ante-mortem injury. The autopsy surgeon found following ante-mortem injuries on the body of the deceased-Priyanka @ Gudia :

"Ante-mortem Injuries :-

1. A ligature mark size 2.5 cm x 1.5 cm present on the neck, oblique, Non continuous, placed high in the neck between. The chin and the larynx and sub cutancary tissue under the mark white, hard and glistening in Position 5 cm below chin, just below outer Ankle of right mandible, 3.5 cm below outer Ankle of left mandible, 5.5 cm below left ear and saliva dribbling left angle of mouth.

2. Multiple bluish contusion size 7 cm x 3 cm present on medial aspect of right upper arm 4.5 cm below right axilla"

It is apposite to mention here that the viscera of the deceased was preserved for chemical examination.

Learned A.G.A. submits that the viscera report of the deceased has not been received as yet.

After aforementioned exercise had been undertaken, the mother of the deceased, namely, Smt. Sunita lodged a delayed F.I.R. dated 15.11.2021, which was registered as Case Crime No.0670 of 2021, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Deoband, district Shaharanpur. In the aforesaid F.I.R., four persons, namely, Dharmendra-applicant herein (husband), Ashwani (Jeth), Rajendra (father-in-law) and mother of Dharmendra (mother-in-law) of the deceased) have been nominated as named accused.

Apart from the usual factum regarding the date and marriage of the deceased with the applicant, the first information report further records that on account of love affair of named accused Dharmendra with another lady and persistent demand of dowry, which was not fulfilled, the daughter of the first informant has been put to death by the named accused on 14.11.2021.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. He examined the first informant and other witnesses under Section 161 CrPC. The witnesses so examined have substantially supported the FIR. 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 three of the named accused, namely, Dharmendra (husband); Rajendra (father-in-law) and Smt. Amresh @ Umrawti (mother-in-law) of the deceased is established in the crime in question. He, accordingly, submitted the charge-sheet dated 04.05.2023, whereby aforementioned three named accused have been charge-sheeted under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act.

After above-mentioned charge-sheet was submitted,

cognizance was taken upon the same by the concerned Magistrate. As the offence complained of is exclusively triable by the court of Sessions, the concerned Magistrate committed the same to the court of Sessions. As a result, Sessions Trial No.1048 of 2022 (State Vs. Dharmendra and others), under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act came to be registered in the Court of Additional Sessions Judge, Court No.11, Saharanpur.

Learned counsel for the applicant contends that up to this stage, five prosecution witnesses, namely, PW-1 Smt. Sunita (first informant/mother of the deceased); PW-2 Dr. Sanjeev Kumar (autopsy surgeon); PW-3 Kajal (sister of the deceased); PW-4 Constable Arvind Kumar; and PW-5 Komal (sister of the deceased) have been examined before the court below. With reference to above, the learned counsel for applicant contends that PW-3 Kajal and PW-5 Komal, who are sisters of the deceased, have not supported the FIR in their deposition before the court below.

According to the learned counsel for applicant, the occurrence in question has occurred after expiry of a period of two years and seven months from the date of marriage of the applicant with the deceased. The deceased was a short tempered lady who has taken the extreme step to commit suicide by consuming some poisonous substance. The bona fide of the applicant is apparent from the fact that no grievous or fatal ante-mortem injury was found on the body of the deceased by the autopsy surgeon. Apart from a ligature mark, one contusion was found on the right upper arm of the deceased. Attention of the Court was then invited to the FIR. With reference to above, the learned counsel for applicant submits that only allegation made in the FIR against applicant is that on account of love affair of applicant with another lady and on persistent demand of dowry, the daughter of the first informant has been put to death. He, therefore, contends that the allegation with regard to demand of dowry has not been substantiated by material particulars. Referring to the judgement of the Supreme Court in **Kahkashan Kausar @ Sonam & others Vs. State of Bihar (2022) 6 SCC 599**, he submits that since the allegations made in the FIR with regard to demand of dowry and commission of physical and mental cruelty upon the deceased in persuading the demand of alleged dowry have not been substantiated by material particulars therefore, the same are liable to be ignored by this Court at this stage.

According to the learned counsel for applicant, PW-1 first informant in her deposition before the court below has supported the FIR, inasmuch as, this witness in her statement has alleged that demand of rupees one lac was made towards additional dowry. On account of non-fulfillment of aforesaid

demand of additional dowry, cruelty was committed upon the deceased.

Learned counsel for applicant contends that though the FIR is not an encyclopedia of the prosecution case but it must disclose the basic prosecution case. The absence of allegation in the FIR with regard to demand of additional dowry (not specified) and the subsequent improvement in the statement of first informant before the court below is a serious contradiction in the prosecution story. The departure so made from the prosecution story as unfolded in the FIR remains unexplained up to this stage. To buttress his submission he has relied upon the following judgements of Supreme Court : **Manoj and Ors Vs State of Maharashtra (1999) 4 SCC-268; Subhash Kumar Vs. State of Uttarakhand (2009) 6 SCC-641; Amar Nath Jha Vs. Nand Kishore Singh and Ors (2018) 9 SCC-137.**

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 16.11.2021. As such, he has undergone approximately two years of incarceration. The police report under Section 173 (2) CrPC has already been submitted against the applicant therefore, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged on the basis of which it can be said that custodial arrest of applicant is necessary during the pendency of trial. He, therefore, contends that no good ground exists to prolong the custodial arrest of applicant. It is thus urged that the 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.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this Court. The occurrence has taken place in the house of the applicant and within seven years of marriage of the applicant. The applicant is husband of the deceased. As such, the burden is upon the applicant to not only explain the manner of occurrence but also his innocence as per Section 106 and 113-B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden up to this stage. The deceased was a young lady whose death has occurred in unnatural circumstances. He, therefore, contends that 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 in the FIR giving rise to present criminal proceeding the allegations with regard to demand of dowry and commission of cruelty upon the deceased on account of non-fulfillment of demand of additional dowry have not been substantiated by material particulars, the departure has been made by PW-1 Smt. Sunita, who is mother of the deceased and also the first informant, in her statement before the court below as PW-1, the departure so made has not been substantially explained by the first informant in her statement referred to above, though the FIR is not an encyclopedia of the prosecution story but it must disclose the basic prosecution case, the judgements of the Supreme Court referred to above, the omission on the part of the first informant in not alleging the specified quantity of dowry alleged to have been demanded by the named/charge-sheeted accused and the manner in which the cruelty was committed upon the deceased in the FIR is a suspicious circumstance against the prosecution which is yet to be explained, the allegation made in the F.I.R. with regard to commission of physical and mental cruelty upon the deceased for non fulfillment of demand of additional dowry is devoid of material particulars therefore liable to be ignored in view of law laid down by Apex Court in **Kahkashan Kausar @ Sonam & others (supra)**, 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, up to this stage, 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, in view of nature of death of the deceased the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC, the bona fide of the applicant is further explicit from the fact that except a ligature mark and one contusion, no other injury was found on the body of the deceased, the judgement of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (SC) 373 (paragraph 5)**, the clean antecedents of the applicant and the period of incarceration undergone, 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 **Dharmendra**, involved in aforesaid case crime number, be released on bail on his 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 he 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, 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 him 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 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 :- 30.10.2023.

Rks.