

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42032 of 2023

Applicant :- Mulo Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Krishna Yadav, Balbir Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record.
2. Heard Mr. Ram Krishna Yadav,, the learned counsel for applicant and the learned A.G.A. for State.
3. Perused the record.
4. This application for bail has been filed by applicant **Mulo Devi** seeking her enlargement on bail in Case Crime No.128 of 2023, under Sections 498A, 304B, 323, 504 I.P.C. & Section 3/4 D.P. Act Police Station Fatehganj East, District Bareilly during the pendency of trial.
5. Record shows that in respect of an incident which is alleged to have occurred on 08.06.2023, a delayed F.I.R. dated 09.06.2023 was lodged by first informant Narveer (brother of the deceased) and was registered as Case Crime No.128 of 2023, under Sections 498A, 304B, 323, 504 I.P.C. & Section 3/4 D.P. Act Police Station Fatehganj East, District Bareilly. In the aforesaid F.I.R. three persons namely Kuwarpal, Chhatrapal and Pramod have been nominated as named accused whereas the mother of the deceased has also been arraigned as an accused.
6. Learned counsel for applicant submits that though applicant is the mother-in-law of the deceased, a named and charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant and two others on 30.08.2023, yet applicant is liable to be enlarged on bail. It is then contended that since applicant is a lady therefore, she is entitled to the benefit of provisions contained in proviso to Section 437 Cr.P.C. The father-in-law of the deceased namely Chhatrapal has already enlarged on bail vide order dated

05.10.2023 passed in Criminal Misc. Bail Application No. 42028 of 2023. For ready reference the same is extracted hereinunder:-

"By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 128 of 2023 at Police Station Fatehganj East District Bareilly under Section 498A, 304B, 323, 504 I.P.C. and Section 3/4 of D.P. Act. The applicant is in jail since 06.08.2023.

The bail application of the applicant was rejected by the learned trial court on 24.08.2023.

The following arguments made by Shri Balbir Singh, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Shrawan Kumar Dubey, learned AGA from the record, entitle the applicant for grant of bail:

- 1. The applicant is the father of Kunwarpal who had a live-in-relationship with the deceased.*
- 2. The deceased had an unhappy first marriage.*
- 3. Quarrels with her first husband continued even after she started living with the said Kunwarpal.*
- 4. The applicant did not torture the deceased nor did he demand dowry.*
- 5. The deceased was a sensitive lady who was prone to extreme reactions even over trivial issues.*
- 6. The deceased became depressed because of the constant discord with her first husband.*
- 7. On the fateful day, the deceased succumbed to depression and took the extreme step of ending her life. He committed suicide by hanging.*
- 8. The postmortem report opines the cause of death as asphyxia due to antemortem hanging.*
- 9. Injuries depicted in the postmortem report consistent with hanging is:*
 - (i) Nature of Ligature mark.*
 - (ii). No abnormality was detected in the hyoid bone.*
- 10. The applicant did not aid or abet the suicide.*
- 11. The prerequisite for attracting the presumption and the reversing the burden of proof are not established in the facts and circumstances and evidence of the case.*
- 12. Prosecution evidence does not connect the applicant with the offence.*

13. The applicant does not have any criminal history apart from the instant case.

14. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Chhatrapal be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted."

7. According to the learned counsel for applicant case of the present applicant stands on same footing as that of co-accused Chhatrapal, who has already enlarged on bail. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforementioned bailed out co-accused so as to deny her bail. He therefore contends that in view of above and for the facts and reasons recorded to the bail order of aforementioned co-accused, applicant is also liable to be enlarged on bail on the ground of parity.

8. Even otherwise, applicant is a woman of clean antecedents having no criminal history to her credit except the present one. Applicant is in jail since 01.07.2023. As such he has undergone more than 3 months 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, Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He therefore submits 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.

9. Per contra the learned A.G.A. for State has opposed the prayer for bail. He submits that since applicant is a named/charge sheeted accused therefore, she does not deserve any indulgence by this

Court. 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.

10. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of applicant, gravity and nature of offence and accusation made coupled with the fact that since, application is the mother-in-law of the deceased, applicant is a lady, therefore, she is entitled to the benefit of provisions contained in proviso to Section 437 Cr.P.C, father-in-law of the deceased has already enlarged on bail, the learned A.G.A. could not point out any such circumstance distinguishing the case of present applicant from other bailed out co-accused so as to deny him bail, inspite of the fact that the charge sheet has been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet inspite 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 course of trial, the clean antecedents of the applicant, the period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comment on the merits of the case, applicant has made out a case for bail.

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

12. Let the applicant- **Mulo Devi**, be released on bail in aforesaid case crime number on her 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.

13. 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 :- 3.11.2023

Imtiyaz