

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42126 of 2023

Applicant :- Rahul @ Bablu

Opposite Party :- State of U.P.

Counsel for Applicant :- Abdul Majid

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri I.M. Khan, Advocate holding brief of Sri Abdul Majid, learned counsel for the applicant, Sri Bade Lal Bind, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Rahul @ Bablu, seeking enlargement on bail during trial in connection with Case Crime No. 291 of 2023, under Sections 498-A, 306 I.P.C. and 3/4 D.P. Act, registered at Police Station Katghar, District Moradabad.
4. On the last occasion i.e. 04.10.2023 learned counsel for the State had submitted that he has not received instructions in the matter for which he was granted time to which he states that now he has received instructions.
5. The FIR of the matter was lodged on 11.06.2023 by Mukul Rastogi against the applicant, Dileep Rastogi and Sudhir Rastogi alleging therein that Rinki Rastogi the sister of the informant was married with the applicant on 23.05.2015. After marriage for some days things were right but after passage of time, the accused persons started torturing her for dowry. There was no child from the wedlock and as such the deceased used to be taunted by them and used to be beaten and there was a demand of Rs. 1 lakh cash as dowry. On refusal she used to be kept hungry. Due to torture and taunting, she committing suicide.
6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the deceased died on 09.06.2023. The marriage of the applicant with the deceased Rinki was solemnized in the year 2015. They were

living together happily for the last eight years. It is argued that since the deceased was unable to conceive pregnancy, a female child of the real sister of the applicant was adopted by the applicant and the deceased but still the deceased was unhappy and she committed suicide. It is argued that the postmortem examination of the deceased shows a single ligature mark on her body and the cause of death is asphyxia as a result of hanging. There is no other injury seen on her body. It is argued that there is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased. The applicant has no mens-rea at all. There is no overt act whatsoever of the applicant which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence. He further argued that the applicant has no criminal history as stated in para 28 of the affidavit and is in jail since 13.06.2023.

7. Per contra, learned counsel for the State opposed the prayer for bail.

8. After having heard learned counsels for the parties and perusing the records, it is evident that in the postmortem examination of the deceased found a single ligature mark on her body and the cause of death is asphyxia as a result of hanging. There is no other injury seen on her body. There is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased. The applicant has no mens-rea at all. There is no overt act whatsoever of the applicant which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence.

9. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

10. Let the applicant **Rahul @ Bablu**, 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 concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the

court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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.

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

11. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

12. The bail application is ***allowed***.

Order Date :- 17.10.2023

M. ARIF

(Samit Gopal, J.)