

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41959 of 2023

Applicant :- Arun Kumar Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Padmakar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Padmakar Pandey, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Arun Kumar Singh seeking his enlargement on bail in Case Crime No.255 of 2021, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Kalyanpur, district Kanpur Nagar, during the pendency of trial i.e. Sessions Trial No.487 of 2023 (State Vs. Arun KUMAR Singh), under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Kalyanpur, district Kanpur Nagar now pending in the court of Additional Sessions Judge, Court No.18, Kanpur Nagar.

Perused the record.

Learned counsel for the applicant submits that though the applicant is named in the first information report but he was exculpated by the Investigating Officer during the course of investigation. Applicant has been summoned by the court below by means of an order dated 25.01.2023 passed under Section 319 CrPC. It is then contended that as per deposition of PW-1, namely, Jatresh Singh, no strong and cogent evidence has emerged against the applicant so as to infer the complicity of applicant in the crime in question. Reference is also made to the judgements of the Supreme Court in **Hardeep Singh Vs. State of Punjab and Others (2014) 3 SCC 92** and **S. Mohammed Ispahani Vs. Yogendra Chandak (2017) 16 SCC 226**, wherein the Court has held *"that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not*

being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

According to the learned counsel for applicant, the husband of the deceased, namely, Rahul Singh Chauhan and the wife of present applicant, namely, Usha Singh have already been enlarged on bail by this Court vide orders dated 28.03.2023 and 11.07.2023 passed in Criminal Misc. Bail Application Nos.34849 of 2021 and 25219 of 2023 respectively. The copies of their bail orders are on record at page 102 and 105 of the paper book.

It is then contended that the case of present applicant is on better footing than the husband of the deceased. It is thus urged that in view of above and for the facts and reasons recorded in the bail orders of husband of the deceased as well as wife of applicant, the present applicant is also liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in custody since 29.08.2023. As such, he has undergone more than one and half months of incarceration. No such circumstance exists on the record necessitating the custodial arrest of applicant during the pendency of trial. He, therefore, contends 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 complicity of applicant in the crime in question has emerged as per deposition of PW-1 before the court below, therefore applicant 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.

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 the husband of the deceased and the wife of applicant have already been enlarged on bail by this Court, the learned A.G.A. could not point out any such distinguishing feature on the basis of which the case of the present applicant could be so distinguished from named/charge-sheeted but bailed out

co-accused so as to deny bail to the present applicant, though the applicant is a named accused but he was exculpated by the Investigating Officer during the course of investigation, applicant has been summoned by the court below in exercise of jurisdiction under Section 319 CrPC, prima facie as per deposition of PW-1 no strong and cogent evidence has emerged against the present applicant in the deposition of PW-1, the judgement of Supreme Court in **S. Mohammed Ispahani (supra)**, the clean antecedents of the applicant, 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 **Arun Kumar Singh**, 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 :- 16.10.2023.
Rks.