

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41998 of 2023

Applicant :- Suresh Saini @ Sureshpal Saini

Opposite Party :- State Of U.P. Through Principal Secretary (Home) At Lucknow,

Counsel for Applicant :- Atul Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Atul Kumar, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Suresh Saini @ Sureshpal Saini seeking his enlargement on bail in Case Crime No.362 of 2023, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Kotwali Nagar, district Muzaffar Nagar, during the pendency of trial.

Perused the record.

It transpires from record that marriage of son of applicant, namely, Ansul Saini was solemnized with Sneha (sister of first informant) before five years of the occurrence in accordance with Hindu rites and customs. However, an unfortunate incident occurred on 26.06.2023 in which the daughter-in-law of applicant died as she committed suicide by hanging herself.

Subsequent to above, a prompt FIR dated 26.06.2023 regarding aforesaid occurrence was lodged by first informant, namely, Ashwani Saini (brother of the deceased) which was registered as Case Crime No.0362 of 2023, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Kotwali Nagar, district Muzaffar Nagar. In the aforesaid FIR, three persons, namely, Suresh Saini-applicant herein (father-in-law); Smt. Babli (mother-in-law); and Anshul Saini (husband of the deceased) have been nominated as named accused.

The gravamen of the allegations made in the first information report is to the effect that as demand of additional dowry was not fulfilled, the sister of the first informant was put to death by named accused by committing strangulation.

After above-mentioned first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. Thereafter, inquest (Panchayatnama) of the body of deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as

homicidal and the cause of death of the deceased was said to be strangulation. Subsequent to above, the post-mortem of body of the deceased was conducted. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased, the cause of death of the deceased is asphyxia as a result of ante-mortem strangulation.

The autopsy surgeon found following ante-mortem injuries on the body of deceased-Sneha :-

"Ante-mortem Injuries :-

- 1. Ligature mark horizontal and continuous, base of mark is Brown & Soft. Subcutaneous issues under the ligature mark are ecchymosed. Size of Ligature mark is 32 cm x 2 cm complete and 6 cm from Right ear pinna & 5 cm from Chin below side & 4 cm from left ear pinna.**
- 2. Bluish contusion mark on Right cheek of size 3 x 2 cm.**
- 3. Abrasion of size 3 x 2 cm present lateral to Right side chin.**
- 4. Bluish contusion mark on Left upper arm 2 x 1 cm & 10 cm from mid axilla.**
- 5. Old scar mark of size 1 x 1 cm in left upper arm 14 cm above left elbow joint."**

During course of investigation, Investigating Officer examined the first informant and other witnesses and recorded their statements under Section 161 CrPC. Witnesses so examined have substantially supported the F.I.R. 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 all the named accused is established in the crime in question. He, accordingly, submitted the charge-sheet dated 14.07.2023, whereby all the named accused have been charge-sheeted under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act.

Learned counsel for applicant submits that though applicant is the father-in-law of the deceased a named/charge-sheeted accused yet he is liable to be enlarged on bail. With reference to the document occurring as Annexure-'9' to the affidavit filed in support of the present application for bail (Sale Deed), it is contended by the learned counsel for applicant that applicant was residing separately. As such, applicant is not an inmate of the house in which the occurrence has occurred. On the above premise, he further submits that there could not be any such act committed by the applicant perpetuating the demand of additional dowry. On the basis of above, he submits that applicant is 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 08.07.2023. As such, he has undergone more than three and half months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against the applicant

stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant. 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 during course of investigation, the complicity of the applicant was found to be established in the crime in question. Except for the sale deed, no such credible evidence has been brought on record to establish separate living of the applicant. Moreover, the issue as to whether the applicant was separately living is a question of fact, which can more appropriately be decided only during the course of trial. Prima facie, up to this stage, no such material is on record of aforementioned case crime number on the basis of which the innocence of the applicant can be inferred. He, therefore, contends that no sympathy be shown by this Court in favour of applicant. As such, the present application for bail is liable to be rejected.

When confronted with above, the learned counsel for applicant could not overcome the same.

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, accusation made and coupled with the fact that the cause of death of the deceased is strangulation, prima facie the applicant is an inmate of the house and also the father-in-law of the deceased therefore by virtue of the provisions contained in Sections 106 and 113-B of the Evidence Act the burden is upon the applicant to not only explain the manner of occurrence but also his innocence, however the applicant has miserably failed to discharge the said burden up to this stage, up to this stage no such material has emerged on record on the basis of which the innocence of the applicant can be conclusively inferred on account of separate living therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, this Court finds that no good or sufficient ground is made out to enlarge the applicant on bail.

The application for bail thus fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 3.11.2023.

Rks.