

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42993 of 2023

Applicant :- Sarla Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Afzal Ansari, Aftab Khan, Maksood Ahmad, Mohd Afroz Khan

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

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

This repeat application for bail has been filed by applicant-Sarla Devi seeking her enlargement on bail in Case Crime No.494 of 2019, under Section 302 IPC, Police Station Tronica City, District Ghaziabad, during the pendency of trial i.e. Sessions Trial Nos.316 of 2020 and 189 of 2020 (State Vs. Sarla) under Section 302 IPC, now pending in the court of Additional Sessions Judge, Court No.6, Ghaziabad.

Perused the record.

The first bail application of the applicant was rejected by this Court by a detailed order 12.02.2021 passed in Criminal Misc. Bail Application No.44834 of 2020. For ready reference, the order dated 12.02.2020 is reproduced herein-under :-

"Heard Sri Ankit Srivastava, learned counsel for the applicant and Sri G. P. Singh, learned A.G.A. for the State and perused the record.

This application under Section 439 Cr.P.C. has been moved seeking bail in Case Crime No. 494 of 2019, under Section 302 of I.P.C., Police Station Tronica City, District Ghaziabad.

As per F.I.R., which was lodged by brother of the deceased, it has been stated that her sister Poonam was married to the co-accused Shyam Singh, about 12 years ago and the co-accused Shyam Singh used to often ill treat the deceased. On 23.06.2019, in order to kill the deceased, the accused applicant has sprinkled thinner upon her and set her on fire by which, she received 65 % burn injuries and she was admitted in the hospital, where her treatment is going on. In post mortem report, the deceased is found to have died due to septicemic shock as a result of ante mortem infected thermal flame burn injuries involving about 65% of total body surface area.

It is argued by learned counsel for the applicant that the accused applicant has been falsely implicated in the present case; she is distant relative i.e. bua-sas and not even mother-in-law of the deceased. She has no motive to kill the deceased. No presumption can be made against her. It is further argued that more than six years have elapsed since the marriage of the deceased. It is further argued that the husband of the deceased has already been granted bail by co-ordinate bench of this Court vide order dated 05.02.2020 in Criminal Misc. Bail Application No. 3367 of 2020. The accused applicant is a 60 years old

lady. Accused is lying in jail since 16.07.2020. She has no criminal history. If she is released on bail, she would not misuse the liberty.

Learned A.G.A. vehemently opposed the prayer of bail and on the basis of dying declaration of the deceased which has been summoned in original by this Court as its copy was not clear and after reading, it is apparent that the name of the accused applicant has been taken by referring the accused applicant as 'usne' which is being disputed by the learned counsel for the applicant stating that it cannot be presumed that the expression 'usne' was referred to the accused applicant. Learned A.G.A. has prayed that bail application of the accused applicant should be rejected.

I have gone through the said dying declaration and it is apparent that it was the accused applicant who has sprinkled thinner upon the deceased and thrown match-stick upon the deceased, which resulted in her death, I do not find it to be a fit case for grant of bail to the accused-applicant.

Accordingly, bail application of the applicant, is rejected.

However, the trial court is directed to expedite the trial of the aforesaid case and conclude the same strictly in accordance with the provisions contained in Section 309 Cr.P.C. within a further period of one year from the date of production of a certified copy of this order.

Furthermore, it is clarified that the observations, if any, made herein above shall be strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

Office is directed to seal the dying declaration and return to the lower court after retaining its photostat copy."

Learned counsel for applicant submits that applicant is in custody since 16.07.2020. As such, she has undergone more than three years and approximately five months of incarceration. Since the applicant is a lady and coupled with the fact that she has gone aforesaid period of incarceration therefore, she is entitled to be enlarged on bail.

From the perusal of report of the court below dated 31.10.2023, it is evident that charges were framed against the charge-sheeted accused on 27.08.2021 and four prosecution witnesses of fact have been examined up to this stage. As such, it cannot be said that there is undue delay in the proceedings of trial. Considering the above, this Court finds that the period of incarceration undergone by the applicant is by itself not so sufficient so as to enlarge the applicant on bail.

In view of above, no occasion arises before this Court to enlarge the applicant on bail. The application for bail thus fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 11.12.2023.
Rks.