

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42183 of 2023

Applicant :- Keshar Jahan

Opposite Party :- State of U.P.

Counsel for Applicant :- Ambreen Masroor, Sadrul Islam Jafri, Sr. Advocate

Counsel for Opposite Party :- G.A., Lal Bahadur, Ram Sajiwan Prajapati

Hon'ble Rajeev Misra, J.

Heard Mr. Ali Jamal Khan, Advocate, holding brief of Mr. Sadrul Islam Jafri, learned counsel for applicant, the learned A.G.A. for State and Mr. Ram Sajiwan Prajapati, the learned counsel for first informant.

Perused the record.

This application for bail has been filed by applicant Keshar Jahan seeking her enlargement on bail in Case Crime No. 162 of 2023, under Sections 498A, 304-B IPC, Section 3/4 D.P. Act, Police Station- Sherkot, District Bijnor during the pendency of trial.

Record shows that marriage of Sadiq, son of applicant was solemnized with Arshi, daughter of first informant on 20.5.2020. However just after expiry of a period of two years and two months from the date of marriage of the son of applicant, an incident occurred on 26.7.2023 in which daughter of first informant died as she committed suicide by hanging herself.

After the occurrence had taken place, a prompt F.I.R. dated 26.7.2023 was lodged by first informant, father of the deceased namely- Nafees and was registered as Case Crime No. 162 of 2023, under Sections 498A, 304-B IPC, Section 3/4 D.P. Act, Police Station- Sherkot, District Bijnor. In the aforesaid F.I.R. three persons namely, Sadiq (husband), Majid(devar), Kesar Jahan(mother-in-law) have been nominated as named accused.

Learned counsel for applicant submits that though the applicant is mother-in-law of the deceased, named as well as charge sheeted accused, inasmuch as charge sheet has already been submitted

against named accused on 13.8.2023, yet the applicant is liable to be enlarged on bail. Referring to the provisions contained in proviso to section 437 Cr.P.C. he submits that since applicant is lady she is liable to be enlarged on bail. Husband of deceased i.e. son of applicant is already in jail. Co-accused Majid (devar) has already been enlarged on bail vide order dated 11.10.2023, passed in Criminal Misc. Bail Application No. 42410 of 2023 (Mazid Vs. State of U.P). For ready reference same is extracted herein under:

"1. Heard Sri N.I. Jafri, learned Senior Advocate assisted by Sri Asif Ahmad, Advocate, holding brief of Sri S.I. Jafri, learned counsel for the applicant and Sri Shatrughna Yadav, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 162 of 2023, under Sections 498-A, 304-B IPC & 3/4 D.P. Act, Police Station- Sherkot, District- Bijnor, during pendency of the trial in the court below.

3. FIR of the present case was lodged against applicant, his brother and mother and according to the FIR, marriage of the brother of the applicant was performed with the deceased about three years before and applicant and his family members were not happy with the dowry and on 26.07.2023, daughter of the informant i.e. deceased died under suspicious circumstances.

4. Learned counsel for the applicant submitted that applicant is the devar of the deceased and on the basis of false allegation of demand of dowry and torture, he has been made accused in the present matter. He further submitted that actually deceased was short tempered lady and some dispute arose between her and family members of the applicant and only due to this reason, she committed suicide by hanging herself. He further submitted that post-mortem report of the deceased suggests that she died due to hanging and her hyoid bone was found intact. He further submitted that being devar, applicant was not having any concern with the family affairs of the deceased and her husband

5. He further submitted that applicant is not having any criminal history and is in jail since 27.07.2023.

6. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that applicant is the devar of the deceased and there is no dying declaration of the deceased on record and deceased died due to hanging.

7. I have heard learned counsel for the parties and perused the record of the case.

8. Considering the fact that applicant is the devar of the deceased and there is no specific allegation against him and deceased died due to hanging, in my view, applicant is entitled to be released on bail.

9. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

10. Let the applicant- Mazid be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless

his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

12. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

13. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.
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On the aforesaid premise, learned counsel for applicant contends that case of present applicant is similar and identical to that aforesaid co-accused. There is no such distinguishing feature on the basis of which case of present applicant can be so distinguished from aforesaid co-accused so as to deny him bail. He, therefore, contends that in view of above and for the facts and reasons recorded in the bail order of aforementioned co-accused applicant is also liable to be enlarged on bail on the ground of parity.

Even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 27.7.2023. As such, he has undergone more than three months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during pendency of trial. It is thus urged that 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. for State and the learned counsel for opposite party-2, have opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. The death of deceased has occurred within seven years of her marriage and at her marital home. The deceased was a young lady aged about 22 years who has died an unnatural death. Applicant is the mother-in-law of the deceased and an inmate of the house therefore, burden is upon the applicant to explain not only the manner of occurrence, but also her innocence in view of Section

106 and 113 B of Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. As such, applicant does not deserve any sympathy of by this Court. However they could not dislodge the factual and legal submissions urged by 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, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that since applicant is a lady, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., prima facie the death of deceased is a suicidal death, in view of the nature of death of deceased, the applicant is not liable to be awarded the maximum sentence under section 304 B IPC, Bonafide of the applicant is also explicit from the fact that no other external ante-mortem injury was found on the body of deceased, except the ligature mark, co-accused Mazid has already been enlarged on bail, learned A.G.A. and learned counsel for first informant could not point out any such circumstance from the record, so as to distinguish the case of present applicant from aforesaid co-accused so as to deny him bail, husband of deceased i.e. son of applicant is already in jail, applicant cannot be said to be the beneficiary of alleged demand of dowry, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized, yet in spite 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 pendency of trial, the period of incarceration undergone, the clean antecedents of applicant, therefore irrespective of the objections urged by the learned A.G.A. and the learned counsel for first informant 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.

Accordingly, the bail application is **Allowed**.

Let the applicant- **Keshar Jahan**, 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 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/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 :- 16.11.2023

Arshad