

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42393 of 2023

Applicant :- Seema

Opposite Party :- State of U.P.

Counsel for Applicant :- Ghazanfar Abbas, Pradeep Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

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

2. Perused the record.

3. Instant application for bail has been filed by applicant-Seema seeking her enlargement on bail in Case Crime No. 43 of 2023 under Sections 304 I.P.C., Police Station-Hazara, District-Pilibhit, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 21.05.2023, a delayed F.I.R. dated 22.05.2023 was lodged by first informant Chunmun (brother of the deceased) and was registered as Case Crime No. 43 of 2023 under Sections 304 I.P.C., Police Station-Hazara, District-Pilibhit, . In the aforesaid F.I.R., applicant-Seema has been nominated as solitary named accused.

5. The gravamen of the allegations made in the F.I.R is to the effect that Ram Kisun brother of the deceased has sold his buffalo alongwith a calf for a sum of Rs. 9500/-. The F.I.R. further states that thereafter Ram Kisun was consuming liquor on account of

which dispute arose between brother of first informant and applicant Seema. In this incident, applicant Seema assaulted her husband i.e. brother of first informant with a Danda. Consequently, brother of the first informant died.

6. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Thereafter, inquest (panchayatnama) of the body of deceased was conducted on 21.05.2023. In the opinion of the witnesses of inquest (panch witnesses), the cause of death of deceased has been specified as injuries sustained by the the deceased. However, the nature of death of deceased could not be categorized as to whether it is homicidal or suicidal. In the opinion of panch witnesses, the death has occurred in suspicious circumstance. Subsequent to above, the post-mortem of the 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 deceased is comma as a result of ante mortem head injuries. The Autopsy Surgeon, found following ante-mortem injuries on the body of the deceased:-

i. Scar Mark 03.50 cm x 02.8 cm on forehead on Rt. side.

ii. Scar Mark 03.0 cm x 02.00 cm just lateral to Rt eye.

iii. Contusion 10.00 cm x 05.00 cm with transmatic swelling 15.00 cm x 07.00 cm over Lt side of face swelling extending from forehead to chin.

iv. Contusiion 12.00 cm x 06.00 cm over rt. left parietal & temporal region.

v. Contusion 02.00 cm x 01.00 cm on dorsal surface of Rt. Forearm.

- vi. LW 01.00 cm x 0.50 cm x muscle deep on nail bed of 4th digit of Rt. hand.**
- vii. Abrasion 05.0 cm x 01.00 cm on radical border of Lt forearm just proximal to wrist joint.**
- viii. Abrasion 03.00 cm x 02.00 cm on back of Lt. Shoulder.**
- ix. Contusion 04.00 cm x 02.00 cm on medial border of Rt. Foot thumb.**
- x. Contusion 11.00 cm x 8.00 cm over Gluteal region on Lt. side.**

7. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C.. Witnesses so examined have supported the F.I.R.. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of applicant is established in the crime in question. Accordingly, he submitted the charge sheet dated 02.07.2023 whereby applicant has been charge sheeted under Section 304 I.P.C..

8. Learned counsel for applicant contends that though the applicant is a named and charge-sheeted accused yet she is liable to be enlarged on bail. Applicant is a lady and therefore by virtue of the provisions contained in proviso to Section 437 Cr.P.C., the applicant is liable to be enlarged on bail. It is then contended that the applicant is the widow of deceased. The occurrence giving rise to present application has occurred at the spur of moment on account of grave and sudden provocation. There is no calculated mens-rea with the applicant to commit the crime in question nor there is evidence on record to show that occurrence giving rise to

present criminal proceedings is the outcome of a pre-planned act of the named/charge sheeted accused/applicant. Therefore, same is covered under the fourth exception to Section 300 I.P.C. Considering the nature of relationship of the parties, nature of offence, the criminality alleged to have been committed by applicant is not likely to go beyond section 304 (II).

9. Even otherwise, applicant is a women of clean antecedents inasmuch as she has no criminal history to her credit except the present one. Applicant in jail since 23.05.2023. As such, she has undergone more than six months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. Upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. He therefore contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a named as well as charge sheeted accused therefore she 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.

11. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that applicant

applicant is the wife of deceased, since the applicant is a lady therefore she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., occurrence giving rise to present criminal proceedings is at the spur of moment on account of grave and sudden provocation, therefore, same is covered under the fourth exception to Section 300 I.P.C., there is nothing on record to show that there was a calculated mens-rea with the applicant to commit the crime in question or the occurrence is the outcome of a pre-planned act of the named/charge sheeted accused, the criminality alleged to have committed by named/charge-sheeted accused may not travel beyond Section 304 part 1I I.P.C. as no deadly weapon was used, the police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised, 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 judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), the period of incarceration undergone by applicant, the clean antecedents of applicant, applicant being a lady is clearly entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

12. Accordingly, present application for bail is **allowed**.

13. Let the applicant-**Seema** involved in aforesaid case crime

number be released on bail on her 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) Applicant will not tamper with prosecution evidence.

(ii) 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) Applicant will not indulge in any unlawful activities.

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

14. 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 of applicant and send her to prison

Order Date :- 8.12.2023
YK