

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42809 of 2023

Applicant :- Baladeen

Opposite Party :- State of U.P.

Counsel for Applicant :- Tarun Jha

Counsel for Opposite Party :- G.A.,Laxmi Narayan Rathour

Hon'ble Rajeev Misra,J.

Heard Mr. Tarun Jha, the learned counsel for applicant, the learned A.G.A. for State and Mr. L.N. Rathour, the learned counsel for first informant.

Perused the record.

This application for bail has been filed by applicant Baladeen, seeking his enlargement on bail in Case Crime No. 68 of 2023, under Section 498A, 304B IPC IPC and Section 3/4 D.P. Act, Police Station- Nadigaon, District Jalaun during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 6.6.2023, a prompt F.I.R. 6.6.2023 was lodged by first informant Rajendra Prasad, which was registered as Case Crime No. 68 of 2023, under Section 498A, 304B IPC IPC and Section 3/4 D.P. Act, Police Station- Nadigaon, District Jalaun. In the aforesaid F.I.R. six persons namely, Baladeen (father-in-law), Munnibai (mother-in-law), Rakesh, Pradeep, Ramkumar and jai Singh, have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that marriage of Mohini, daughter of first informant, was solemnized with Pradeep about three years prior to the date of F.I.R. At the time of marriage, sufficient amount of goods and dowry were given. However applicant and other family members of applicant were dissatisfied with the same. Subsequently, additional demand of fridge and motorcycle was made. As additional demand of dowry was not fulfilled, physical and mental cruelty was committed upon first informant. Ultimately, the daughter of first informant was put to death on 6.6.2023. After registration of aforesaid F.I.R. Investigating Officer proceeded

with statutory investigation of aforementioned case crime number in terms of Chapter XII Cr.P.C. Thereafter the inquest (panchayatnama) of the body of the deceased was conducted. In the opinion of witnesses of inquest (panch witnesses), the nature of death of deceased was characterized as suicidal and the cause of death of deceased was said to be hanging. Thereafter, 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 was asphyxia as a result of ante-mortem hanging. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"Reddish brown colored ligature mark in the form of pressure abrasion with base of the ligature mark is dry, hard and margins ecchymosed present all around neck measuring 21 cm in length, with varying width from minimum of 1.5 cm to 2 cm lying at and above the level of the thyroid cartilage, going obliquely upwards and backwards on back sides which is along the angle of mandible on left side of neck 8 cm below pinna of ear on right side and 1 cm below pinna of ear on left side. The mark is 5 cm from extended chin, 9 cm from sternal notch at the center. Total eck circumference is 28 cm on dissection undersurface of the ligature mark is dry while glisteninig underneath the ligature mark. "

During course of investigation, Investigating Officer examined 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 also established in the crime in question. He, accordingly submitted the charge sheet dated 14.8.2023 whereby three of the named accused namely, Baladeen, Pradeep and Munni have been charge sheeted under sections 498A, 304B IPC and Section 3/4 D.P. Act. Rest of the named accused were exculpated. Learned counsel for applicant submits that applicant is father-in-law of the deceased. Though the applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. The deceased was a short tempered lady and she has taken the extreme step of terminating her life by committing suicide. Bonafide of the applicant is explicit from the fact that except for the ligature mark, no other ante-mortem injury was found on the body of deceased. Applicant cannot be said to be the beneficiary of alleged demand of dowry. Son of applicant i.e. husband of deceased is already languishing in jail.

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 9.6.2023. As such, he has undergone more

than ten months of incarceration. 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, no such circumstance has emerged necessitating custodial arrest of applicant. 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 trial.

Per contra, the learned A.G.A. and learned counsel for first informant have opposed the prayer for bail. They submits that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. Moreover, the occurrence has taken place in the house of applicant and within seven years of marriage. As such, the death of the deceased is a dowry death. By reason of above, the burden is upon the applicant himself not only to explain the manner of occurrence in terms of Section 106 and but also his innocence under section 113 B of the Evidence Act. However, applicant has miserably failed to discharge the aforesaid burden up to this stage. It is thus urged that no sympathy be shown in favour of applicant. However, they 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, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that applicant is father-in-law of deceased, prima facie the applicant cannot be said to be beneficiary of alleged demand of dowry, bonafide of the applicant is explicit from the fact that no other external ante-mortem injury was found on the body of deceased except the ligature mark, the death of the deceased is a suicidal death, the allegation made in the F.I.R. that physical and mental cruelty was committed upon the deceased in pursuit of demand of dowry are vague and bald allegations being devoid of material particulars, as such by reason of the judgement of Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**, the said allegation are liable to be ignored by Court at this stage, clean antecedents of applicant, period of incarceration undergone, Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized, yet inspite of above, inspite of

above, learned A.G.A. could not point out any such circumstance from the record necessitating custodial arrest of applicant during pendency of trial, in view of the nature of death of deceased the applicant is not liable to be awarded the maximum sentence under Sections 304 B IPC, therefore irrespective of the objection raised by 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 **Baladeen**, 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 :- 27.10.2023

Arshad