

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43091 of 2023

Applicant :- Smt. Sarvari

Opposite Party :- State of U.P.

Counsel for Applicant :- Dileep Kumar Shukla

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41554 of 2023

Applicant :- Jarif Ahmad

Opposite Party :- State of U.P.

Counsel for Applicant :- Dileep Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Dileep Kumar Shukla, the learned counsel for applicants and the learned A.G.A. for State.

2. Perused the record.

3. These applications for bail have been filed by applicants Smt. Sarvari (mother-in-law) and Jarif Ahmad (father-in-law) of the deceased seeking their enlargement on bail in Case Crime No.43 of 2023, under Sections 498-A, 304-B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Sonakpur, District Moradabad during the pendency of trial.

4. Record shows that marriage of Shamim son of applicants was solemnized with Gulista on 04.11.2020. From the aforesaid wedlock a male child was born. However, just after expiry of a period of two years and 8 months from the date of marriage of the son of applicants an unfortunate incident occurred on 04.07.2023, in which the daughter-in-law of the applicants died as she committed suicide by hanging herself. However, no information regarding aforesaid occurrence was given by applicants or any of their family members at the concerned police station in terms of Section 174 Cr.P.C. To the contrary the informant regarding

aforementioned occurrence at the concerned police station was given by one Rashid Village Chaukidar. On the above informant the inquest (Panchayatnama) of the deceased was conducted on 04.07.2023. In the opinion of the witnesses of inquest (Panch Witnesses) the nature of death of the deceased was categorized as suicidal and the cause of death of the deceased was specified as hanging. Thereafter, post mortem of the body of deceased was conducted. In the opinion of autopsy surgeon who conducted autopsy of the body of deceased, the cause of death of deceased was as asphyxia as a result of ante-mortem hanging. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

(i) Ligature mark of size 19.00x 2.00 even all around neck against 16 cm at back 4.

(ii) lateral aspect Neck, obliquely placed.

(iii) side neck, 6.00 front Rt ear, 4 cm from enin and 3 cm front lt ear. Base Groove is brom. a prchmeat life as sisseeha s/c tissue under legature mark white ward and gustenuy.

5. After above-mentioned proceedings had been undertaken an F.I.R. dated 04.07.2023 came to be lodged by first informant Sarafat (father of the deceased) and was registered as Case Crime No.43 of 2023, under Sections 498-A, 304-B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Sonakpur, District Moradabad. In the aforesaid F.I.R. seven persons namely (1) Shamim (2) Faizan (3) Jarif (4) Sarvari (5) Nikhat (6) Shabnam and (7) Zainab have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. apart from usual details of marriage is that in-laws of the daughter of the first informant were dissatisfied with the amount of goods and dowry given at the time of marriage. Consequently, cruelty was committed upon the deceased i.e. the daughter of the first informant. An additional demand of vehicle was also made. As the said additional demand was not fulfilled, cruelty was committed upon the daughter of the first informant i.e. deceased. The F.I.R. ultimately concludes with the recital that deceased was put to death by committing strangulation upon her.

7. After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. Investigating Officer examined the first informant and other witnesses under Section

161 Cr.P.C. Witnesses so examined have substantially supported the F.I.R. On the basis of above and other material collected by the Investigating Officer, during course of investigation, he came to the conclusion that complicity of only three of the named accused namely Jarif Ahmad (father-in-law) Smt. Sarvari (mother-in-law) and Shamim (husband of the deceased) alone is established in the crime in question. He accordingly, submitted that charge sheet dated 02.09.2023, whereby, aforementioned named accused have been charge sheeted, whereas, the other named accused have been exculpated.

8. Learned counsel for applicants submits that though applicants are named and charge sheeted accused yet they are liable to be enlarged on bail. Applicants are the father-in-law and mother-in-law of deceased. The deceased was a short tempered lady and she has taken an extreme step of terminating her life by committing suicide by hanging herself. The bona-fide of the applicants is explicit from the post mortem report of the deceased wherein Autopsy Surgeon has not found any other external ante-mortem injury on the body of deceased except the ligature mark. Applicants who are the father-in-law and mother-in-law of the deceased cannot said to be the beneficiary of the alleged demand of dowry. The son of the applicants i.e. husband of the deceased is already languishing in jail. Referring to the F.I.R. lodged by the first informant, learned counsel for applicants contends that the F.I.R. giving rise to the present criminal proceedings is completely silent with regard to the manner in which cruelty was committed upon the deceased or the way in which additional demand of dowry i.e. vehicle was made. The vehicle which is alleged to have been demanded in additional demand has also not been specified. He therefore, contends that the said allegations made in the F.I.R. are vague and bald allegations inasmuch as the same are devoid of material particulars.

9. Attention of the Court was then invited to the statement of the first informant recorded under Section 161 Cr.P.C. which is on record at page 42 of the paper book. With reference to above, it is contended by the learned counsel for applicants that even in his statement under Section 161 Cr.P.C. the first informant has not established nor explained the allegations as noted above and made in the F.I.R. On the above premise, he therefore, contends that the allegations made in the F.I.R. regarding demand of additional dowry and commission of physical and mental cruelty upon deceased on account of non fulfillment of demand of additional dowry are not worthy of credit. Even otherwise, applicant Smt.

Sarvari is the mother-in-law of the deceased. As such, applicant Smt. Sarvari is a lady and therefore, she is entitled to be benefit of provision contained in proviso to Section 437 Cr.P.C.

10. Even otherwise, applicants are of clean antecedents having no criminal history to their credit except the present one. Applicants are in jail since 18.08.2023. As such, they have undergone more than 3 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystallized. However, up to this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, he submits that applicants are liable to be enlarged on bail. In case, the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

11. Per contra, the learned A.G.A. for State has opposed the prayer for bail. He submits that since applicants are named as well as charge sheeted accused, therefore, they do not deserve any indulgence by this Court. According to the learned A.G.A. the deceased was a young lady aged about 25 years who has died in suspicious circumstance. As such, the death of the deceased is an unnatural death. Moreover, the death of the deceased has occurred within seven years of her marriage. Therefore, the death of the deceased is a dowry death. Applicants are the father-in-law and mother-in-law of the deceased. They are also the inmates of the house in which the occurrence has occurred. By reason of above, the burden is upon the applicants to not only explain the manner of occurrence but also their innocence in terms of Sections 106 and 113B of the Evidence Act. However, the applicants have miserably failed to discharge the said burden upto this stage. It is thus urged by the learned A.G.A. that no sympathy be shown by this Court in favour of applicants. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

12. Having heard, the learned counsel for applicants, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made and complicity of applicants coupled with the fact that applicants are father-in-law and mother-in-law of the deceased, applicant Smt. Sarvari is a lady therefore, she is entitled to be benefit of the provision contained in proviso to Section 437 Cr.P.C, bona fide of the applicants is further explicit from the fact that except the ligature mark, no other external ante-mortem injury was found on the body of deceased by the autopsy

surgeon, the son of applicants i.e. husband of the deceased is already languishing in jail, applicants cannot be said to be the beneficiary of the alleged demand of dowry, allegations made in the F.I.R. regarding demand of additional dowry and commission of physical and mental cruelty upon deceased have not been evidenced by material particulars, as such, the same are vague and bald allegations, no attempt has been made by the first informant to explain/establish the same in his statement under Section 161 Cr.P.C., in the absence of material particulars regarding above, the same are liable to be ignored by this Court, in view of the law laid down by the Apex Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**, the clean antecedents of applicants, the period of incarceration undergone, the police report 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 applicants stands crystallized, yet inspite of above the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicants during the pendency of trial, the judgment of the Supreme Court in **Sumit Subhaschandra Gangwal & Anr. Vs. The State of Maharashtra & Anr. 2023 Live Law (SC) 373 (paragraph 5)**, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present applications for bail, but without making any comment on the merits of the case, applicants have made out a case for bail.

13. Accordingly, the bail applications are **allowed**.

14. Let the applicants **Smt. Sarvari and Jarif Ahmad**, be released on bail in aforesaid case crime number on their 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 APPLICANTS 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 APPLICANTS 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 APPLICANTs 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 APPLICANTs 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 APPLICANTs 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 APPLICANTs 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 APPLICANTs.

15. However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their 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 :- 28.11.2023

Imtiyaz