

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44088 of 2023

Applicant :- Akansha

Opposite Party :- State of U.P.

Counsel for Applicant :- Alok Kumar Mishra

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42810 of 2023

Applicant :- Smt. Kamini

Opposite Party :- State of U.P.

Counsel for Applicant :- Alok Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. AlokKumar Mishra, 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-Akansha and Smt. Kamini, seeking their enlargement on bail in Case Crime No. 154 of 2023, under Sections 498-A, 323, 304-B, 506 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Shalimar Garden, District-Ghaziabad during the pendency of trial.

4. It transpires from record that marriage of Devendra Kumar (son of applicant-Smt. Kamini) was solemnized with Bhavna on 24.10.2022. However, just after expiry of a period of 7 months and 26 days from the date of marriage of the son of applicant-Smt. Kamini, an unfortunate incident occurred on 24.06.2023 in which, daughter-in-law of the applicant-Smt. Kamini died as she committed suicide by hanging herself.

5. Learned counsel for applicants submits that applicant-Smt. Kamini is the mother-in-law of the deceased whereas the applicant-Akansha is the unmarried Nanad of the deceased. He,

therefore, submits that since applicants are ladies, they are entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C. The bona-fide of the applicants is explicit from the fact that the Autopsy Surgeon, who conducted autopsy of the body of deceased, did not find any external ante-mortem injuries on the body of deceased except the ligature mark. The deceased was a short tempered lady and she has taken an extreme step of terminating her life by committing suicide. The husband of the deceased i.e. the son of applicant-Smt. Kamini is already in jail. Applicants cannot be said to be the beneficiary of the alleged demand of dowry. As such, they are liable to be enlarged on bail.

6. Even otherwise, applicants are of clean antecedents inasmuch as, they have no criminal history to their credit except the present one. Applicants are in jail since 26.06.2023. As such, they have undergone more than 4 and 1/2 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 applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant 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.

7. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since the occurrence giving rise to resent criminal proceedings has occurred just after expiry of a period of 7 months and 26 days from the date of marriage of deceased with the son of applicant-Smt. Kamini, therefore, no indulgence be granted by this Court in favour of applicants. Since the death of the deceased is a dowry death and applicants are the mother-in-law and unmarried Nanad of the deceased as also inmates of the house where the occurrence occurred, therefore, the burden is upon the applicants to not only explain the manner of occurrence but also their innocence in terms of Section 106 and 113-B of the Evidence Act. However, the applicants have miserably failed to discharge the said burden up to this stage. Therefore, they do not deserve any sympathy of this Court. 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.

8. 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, complicity of accused and

coupled with the fact that applicant-Smt. Kamini is the mother-in-law of deceased whereas applicant-Akansha is the unmarried Nanad of deceased, applicants are ladies, therefore, they are entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C, the husband of deceased i.e. son of applicant-Smt. Kamini is already in jail, prima-facie, applicants cannot be said to be the beneficiary of the alleged demand of dowry, the bona-fide of the applicants is explicit from the fact that except for the ligature mark, no other external ante-mortem injury was found on the body of deceased, prima-facie the death of the deceased is a suicidal death, applicants are not liable to be awarded the maximum sentence under Section 304-B IPC, in case, they are convicted, the clean antecedents of applicant, 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 in spite 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 Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicants have made out a case for bail.

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

10. Let the **applicants-Akansha and Smt. Kamini**, be released on bail in the 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 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.

11. 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 :- 16.11.2023

Vinay