

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43850 of 2023

Applicant :- Kajol @ Komal

Opposite Party :- State of U.P.

Counsel for Applicant :- Jagmohan Singh

Counsel for Opposite Party :- G.A.,Sanjay Kumar Nigam

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42248 of 2023

Applicant :- Dashrath Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Jagmohan Singh

Counsel for Opposite Party :- G.A.,Sanjay Kumar Nigam

Hon'ble Rajeev Misra,J.

Heard Mr. Jagmohan Singh, the learned counsel for applicants, the learned A.G.A. for State and Mr. Sanjay Kumar Nigam, the learned counsel representing first informant.

These applications for bail have been filed by applicant Kajol @ Komal and Dashrath Singh seeking their enlargement on bail in Case Crime No. 152 of 2023, under Sections 498A/304B IPC and Sections 3/4 Dowry Prohibition Act, P.S. Sachedi, District Kanpur Nagar, during the pendency of trial.

Perused the record.

Record shows that marriage of Laxmi Devi was solemnized with Santosh Kumar, yougner brother of applicant Dashrath Singh on 18.4.2022. However, just after expiry of a period of 1 year and 12 days from the date of marriage of the younger brother of applicant Dashrath Singh, an unfortunate incident occurred on 29/30.4.2023 in which Laxmi Devi, the wife of younger brother of Dashrath Singh died. It is the case of applicant that information regarding aforesaid suicidal death of deceased was given by the uncle of applicant to the father of the deceased. However, no information as

required under Section 174 Cr. P. C. was given at the concerned police station by the applicant or by any of his family members.

Subsequently, Lala, the father of the deceased lodged an F.I.R. dated 30.4.2023, which was registered as Case Crime No. 152 of 2023, under Sections 498A/304B IPC and Sections 3/4 Dowry Prohibition Act, P.S. Sachedi, District Kanpur Nagar.. In the aforesaid F.I.R., eight persons namely Santosh Singh (husband), Champa Devi (mother-in-law), Dashrath Singh (Jeth), Jethani, Lal Singh (cousin father-in-law) (chachiya sasur), Rachana Devi (Nand), Sri Kishan (Nandoi) and Pappu (maternal father-in-law) (mamiya sasur) of the deceased have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that at the time of marriage sufficient amount of goods and jewellery was given. However, in-laws of the daughter of the first informant were dissatisfied with the same. Subsequently, an additional demand of car was made by the in-laws of the daughter of first informant. As additional demand of dowry was not fulfilled, cruelty was committed to bring additional demand of dowry from her home. However, the F.I.R. specifies that the cruelty was committed upon the daughter of first informant only by the husband of the deceased. Ultimately, the named accused caused the death of the deceased i.e. daughter of first informant and hanged her body from a tree.

After above mentioned 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 the deceased was conducted on 30.4.2023. In the opinion of witnesses of inquest (*Panch* witnesses), the nature of death of deceased was categorized as suicidal and the cause of death of accused was specified as hanging. Thereafter, the post mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, cause of the death was opined as asphyxia as a result of ante mortem hanging. The Autopsy Surgeon found following ante mortem injuries on the body of deceased:-

Ligature mark around neck 33 cm x 2 cm gap if around 6 cm R side back of neck.

During course of investigation, Investigating Officer recorded the statements of 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, he came to the conclusion that complicity of four of the named accused namely Santosh Singh (husband), Champa Devi (mother-in-law), Dashrath Singh (jeth) and Smt. Kajal @ Komal (jethani) of the deceased is established in the commission of crime in question. He, accordingly, submitted the charge sheet dated 19.7.2022, whereby aforementioned named accused have been charge sheeted under Sections 498A, 304B and Sections 3/4 D.P. Act, whereas investigation against other named accused is said to be pending.

Learned counsel for applicants contends that applicants are innocent. Applicants are the jeth and jethani of the deceased. Irrespective of the fact that applicants are charge sheeted accused, yet they are liable to be enlarged on bail.

According to the learned counsel for applicants, the deceased was a short tempered lady and she has taken the extreme step of committing suicide by hanging herself. The bona fide of the applicants is explicit from the fact that no other external ante mortem injury was found on the body of deceased except the ligature mark. Prima facie, the death of deceased is a suicidal death. As per the document occurring at page 48 of the paper book, it is established that applicants were living separately from the family of deceased. Moreover, applicants cannot be said to be beneficiary of the alleged demand of additional dowry. The husband of the deceased i.e. brother of the applicant Dashrath Singh is already in jail. Moreover, the applicant Kajol @ Komal is a lady and therefore, entitled to the benefit of the provisions contained in proviso to Section 437 Cr. P. C.

Attention of the Court was then invited to the F.I.R., and on basis thereof, he submits that allegation regarding commission of cruelty upon deceased on account of non fulfillment of additional demand of dowry has been specifically made against the husband of the deceased and not other named accused. As such, it is admitted case of the prosecution that though demand of dowry was made by all the named accused, but cruelty was committed upon deceased by her husband alone.

Even otherwise, applicants are of clean antecedents having no criminal history to their credit except the present one. Applicants are in jail since 05.06.2023. As such, they have undergone more than 5 and a half 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 the applicants stands crystallized. However, upto this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicants during the pendency of trial. It is thus urged 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.

Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that since applicants are the jeth and jethani of the deceased named and charge sheeted accused, therefore, they do not deserve any indulgence by this Court. The death of the deceased has occurred within seven years of her marriage and at her marital home. As such, the death of the deceased is a dowry death. Applicants are Jeth and Jethani of the deceased. Therefore, burden is upon the applicant to not only explain the manner of occurrence but also his innocence in terms of Sections 106 and 113 of the Evidence Act. However, applicants have failed to discharge the said burden. Upon this stage simply on the basis of the certification issued by the Gram Pradhan which is not a private document, it cannot be said that applicants are living separately. The deceased was a young lady aged about 21 years, who has died in unnatural circumstance. As such, no sympathy be shown by this Court in favour of applicants, However, they could not dislodge the factual/legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

Having heard the learned counsel for applicants, the learned A.G.A. for state, the learned counsel representing first informant upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that prima facie the death of the deceased a suicidal death, the bona fide of the applicant is explicit from the fact that no external or internal ante mortem injury was found on the body of deceased except the ligature mark, in view of above, the applicants are not liable to be awarded the maximum sentence for the offence under Section 304 B IPC, if convicted, it is the admitted case of the prosecutrix as per the prosecution story unfolded in the F.I.R. that though demand of additional dowry (car) was made by all the accused, but on account of non fulfillment of of the said demand of dowry cruelty was committed upon deceased only by her husband, applicants cannot be said to be beneficiary of the alleged demand of dowry, 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 the applicants stands crystallized, however, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial, the judgement of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (para5)** the clean antecedents of applicants, the period of incarceration undergone by applicants, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to this application for bail, but without making any comments on the merits of the case, the applicants have made out a case for bail.

Accordingly, bail applications are **allowed**.

Let the applicants **Kajol @ Komal and Dashrath Singh** involved in aforesaid case crime number, be released on bail on their furnishing a personal bond with 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 they will not tamper with the evidence and will not pressurize/intimidate the prosecution witnesses and will cooperate with the trial. The applicants shall not seek any adjournment on the dates 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 their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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 them 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.

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 :- 2.12.2023

HSM