

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43245 of 2023

Applicant :- Santosh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Mahendra Pratap Singh

Counsel for Opposite Party :- G.A.,Bharat Bhushan Dubey

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Mahendra Pratap Singh, learned counsel for the applicant, Sri Bharat Bhushan Dubey, learned counsel for the informant, as well as Sri V.K.S. Parmar, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 281 of 2016, U/S 498-A, 304-B IPC and 3/4 Dowry Prohibition Act, Police Station Rura, District Kanpur Dehat, during the pendency of trial.
4. This is the second bail application. The first application being Criminal Misc. Bail Application No. 47126 of 2018 was dismissed for want of prosecution vide order dated 6.4.2023 and not on merits.
5. As per prosecution story, marriage of the sister of the informant was solemnized with the applicant as per Hindu rites on 12.2.2012 and subsequent to it, the applicant and other family members are stated to have subjected her to cruelty for demand of dowry of Rs. 1 lakh and a motorcycle, thereupon, the applicant is stated to have set her afire on 24.8.2016 as per the information received by the informant at the same day at 3.00 pm. The deceased is stated to have succumbed to her injuries on 29.8.2016. The last rites of the deceased were conducted on 30.8.2016 and subsequent to it, the FIR was instituted on 1.9.2016.
6. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. He has further stated that the inquest report of the deceased person was prepared by the Magistrate concerned on

29.8.2016 and the applicant alongwith his mother Krishna Devi was present at that time. The applicant is arrayed as witness no. 1 and his mother Krishna Devi is arrayed as witness no. 2 as punch witness in the inquest proceedings and the other witnesses also belong to the family of the applicant. It is next stated that had the story been so, their names would have come up at the stage of recording of the inquest proceedings itself.

7. Learned counsel has further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 2.9.2016, as such, his fundamental rights enshrined in Article 21 of the Constitution of India stands fulfilled. Learned counsel has placed reliance on the judgement of the Supreme Court passed in *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713. Learned counsel has next stated that a perusal of the dying declaration of the deceased person indicates that the applicant in an inebriated state, assaulted the deceased person. Peeved by it, she had sprinkled kerosene oil over her and the applicant had set her afire by the matchstick but the applicant is stated to have tried to extinguish the said fire, whereby he also sustained burn injuries.

8. Learned counsel has placed reliance on the injury report of the applicant, which has been filed as Annexure-7 to the affidavit annexed with the bail application, whereby the applicant had sustained three injuries, two on both of his hands and one in his abdomen, just below his umbilicus area. Learned counsel has stated that the said injury of the applicant speaks of his innocence.

9. Learned counsel has further stated that the witnesses of dying declaration are yet to be examined. In all, eight witnesses have been examined and there are seventeen of them mentioned in the charge sheet. Learned counsel has stated that there is no likelihood of early conclusion of trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

10. Learned A.G.A. has vehemently opposed the bail application on the ground that the applicant has been nominated in the dying declaration, although he could not dispute the fact that the applicant himself has sustained burn injuries in the said scuffle.

11. Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, taking into consideration the fact that the said incident seems to have occurred in the spurt of rage and the applicant himself had sustained injuries while he was trying to extinguish the fire sustained by the deceased, as is evident from her dying declaration and also coupled with the fact

that the applicant is incarcerated by about seven years, and considering the larger mandate of the Article 21 of the Constitution of India and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

12. Let the applicant- **Santosh Kumar**, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence.

(ii) 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 him in accordance with law.

13. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

14. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 8.11.2023

Shalini