

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44193 of 2023

Applicant :- Ankit @ Khemchandra

Opposite Party :- State of U.P.

Counsel for Applicant :- Akhilendra Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Akhilendra Yadav, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Ankit @ Khemchandra**, seeking enlargement on bail during trial in connection with Case Crime No. 225 of 2021, under Section 498-A, 304-B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Linepar, District Firozabad.

3. The first information report of the present matter was lodged on 28.11.2021 by Preetam against Vineet, Ankit @ Khemchandra (the present applicant) and Smt. Munni alleging therein that his daughter Kusuma @ Chhota was married to Vineet on 16.07.2021 and Suman daughter of Lala Ram was married to Ankit @ Khemchandra the elder brother of Vineet on 18.07.2021. Both the boys who were brothers were demanding a motorcycle and money as dowry and used to torture and harass Kusuma @ Chhota and Suman. They were consoled many times but they in conspiracy of their mother Smt. Munni forcibly administered poison to both the girls and murdered them. When he came to know of it, he came to Firozabad and has lodged a report. Nitin Arya is the scribe of the said first information report.

4. Smt. Suman who is one of the deceased and wife of Ankit @ Khemchandra daughter of Lala Ram was subjected to postmortem examination wherein the doctor did not find any external mark of injury all over her body and as such the cause of death could not be ascertained and hence viscera was preserved. The other deceased Kusuma @ Chhota wife of Vineet and daughter of Preetam was also subjected to postmortem examination wherein the doctor did not find any external mark of injury all over her body, the cause of death could not be ascertained and viscera was preserved. The applicant is the husband of the deceased Smt. Suman being the daughter of Lala Ram who is cousin of the first informant Preetam.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that there is no evidence whatsoever to show that the applicant is involved in the present matter. It is argued that marriage

of both the deceased was solemnized in a group marriage ceremony and as such there was no occasion for the applicant or the other two accused persons to demand any dowry. It is argued that both the deceased did not want to live in Sant Nagar, Firozabad and wanted to live with their husbands at Haryana where they were working but still they were sent forcibly to their matrimonial house by their parents after which they consumed poison and committed suicide. It is argued that the administration of poison by two women is not possible as they would resist and would sustain injuries over their body but there is no injury on the body of both the deceased. It is argued that Preetam the first informant of the matter was examined as P.W.-1 before the trial court who has not supported the prosecution case and has been declared hostile. His statement has been placed before the Court which is annexed as Anneuxre-12 to the affidavit. It is further argued that Lala Ram the cousin of Preetam and father of the deceased Suman has been examined as P.W.-2 before the trial court who has also not supported the prosecution case and has been declared hostile. The said statement has been placed before the Court which is annexed as Anneuxre-13 to the affidavit. It is argued that Smt. Guddi Devi wife of Preetam Singh and mother of Kusuma @ Chhota one of the deceased was examined as P.W.-3 before the trial court who has also not supported the prosecution case and has been declared hostile. The said statement has been placed before the Court which is annexed as Anneuxre-14 to the affidavit. It is further argued while placing the statement of Smt. Chandrawati wife of Lala Ram and mother of Suman one of the deceased was examined as P.W.-4 before the trial court who has not supported the prosecution case and has been declared hostile. Her said statement has been placed before the Court which is annexed as Anneuxre-15 to the affidavit.

6. Learned counsel for the applicant argued that co-accused Vineet the husband of Kusuma @ Chhota has been granted bail by a co-ordinate Bench of this Court vide order dated 17.10.2023 passed in Criminal Misc. Bail Application No. 44200 of 2023. Further Smt. Munni the mother-in-law of both the deceased has also been granted bail by a co-ordinate Bench of this Court vide order dated 19.07.2023 passed in Criminal Misc. Bail Application No. 31638 of 2023, the copy of the said orders have been placed before the Court which are taken on record. The applicant has no criminal history as stated in para 35 and is in jail since 29.11.2021.

7. *Per contra*, learned A.G.A. vehemently opposed the prayer for bail and argued that the applicant is the husband of Smt. Suman one of the deceased. The marriage of the applicant with Suman was solemnized on 18.07.2021 after which she died on 27.11.2021 which is after about 04 months & 09 days of her marriage. It is argued that the death of the deceased is unnatural in her matrimonial house. It is further argued that in so far as the first informant Preetam is concerned initially in his examination-in-chief which was recorded on 28.03.2023 he has supported the prosecution case in full after which he was cross-examined on the said date briefly wherein he stated that he does not know as to who had transcribed the *tehrir* of the first information report. Subsequently his cross-examination was done on

26.04.2023 which is after about 28 days of recording of his examination-in-chief and then he did not support the prosecution case and was declared hostile. It is argued that the same would go to show that there has been tampering of evidence. It is argued that subsequently the other three witnesses were examined on 22.05.2023, 05.07.2023 and 17.07.2023 who did not support the prosecution case and were declared hostile. It is argued that the same would go to show that there had been tampering of evidence by the accused persons including the applicant. It is argued that looking to the same and the fact that the applicant is named in the first information report, two cousin sisters were married to two real brothers in the same house and they died together within 05 months of marriage and there are allegations against the applicant, the bail application be rejected.

8. After having heard learned counsels for the parties and perusing the records, it is evident that in the present matter two ladies namely Kusuma @ Chhota married to co-accused Vineet and Suman married to the applicant Ankit @ Khemchandra have died in the same house on the same day. The cause of death is identical. The applicant is the husband of one of the deceased namely Suman who is the daughter of Lala Ram and cousin of the first informant Preetam. The death of wife of the applicant has occurred within 04 months & 09 days of marriage. There is an allegation in the first information report and even during investigation regarding demand of dowry by the applicant and co-accused persons. Preetam the first informant was examined as P.W.-1 before the trial court. He in his examination-in-chief has supported the prosecution case in full. Subsequently after 28 days of the same in his cross-examination he takes a summersault and denies the prosecution case and then is declared hostile. Identically 03 other prosecution witnesses who were examined later on subsequent dates did not support the prosecution case and were declared hostile. The argument that the marriage of both the deceased girls was solemnized in a group marriage ceremony does not hold good as the dates of marriage are different. The Apex Court in the case of ***Munilakshmi v. Narendra Babu: 2023 LiveLaw (SC) 924*** has viewed the hostility of witness with great seriousness and even the hostility of witnesses who initially supported the prosecution case but after some period of time denied it has been considered as a case of tampering with evidence.

9. In view of the facts and circumstances of the case, although two co-accused have been granted bail but looking to the facts as enumerated above, the decision of the Apex Court in the case of ***Munilakshmi*** (supra), this Court is of the opinion that no case for bail is made out. It is for the trial court to appreciate the statements of witnesses in the trial at the appropriate stage.

10. The bail application thus fails and is accordingly, **rejected**.

Order Date :- 28.10.2023

AS Rathore

(Samit Gopal,J.)