

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43451 of 2023

Applicant :- Surendra @ Kala

Opposite Party :- State of U.P.

Counsel for Applicant :- Mandeep Singh, Dinesh Kumar Yadav

Counsel for Opposite Party :- G.A., Monika Pal

Hon'ble Rajeev Misra, J.

Heard Mr. Mandeep Singh, the learned counsel for applicant, the learned A.G.A. for State and Ms. Monika Pal, the learned counsel representing first informant.

This application for bail has been filed by applicant Surendra @ Kala seeking his enlargement on bail in Case Crime No.747 of 2022, under Sections 498-A, 323, 504, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Sardhana, district Meerut, during the pendency of trial.

Perused the record.

Record shows that marriage of applicant Surendra @ Kala was solemnized with Babita on 02.07.2018. From the aforesaid wedlock, two daughters were born. However, just after expiry of a period of four years and five months from the date of marriage of applicant, an unfortunate incident occurred on 15.12.2022 in which the wife of applicant, namely, Babita died as she committed suicide by hanging herself.

The first information report in respect of aforesaid occurrence was lodged on the next day i.e. 16.12.2022 by Arjun (brother of the deceased) and was registered as Case Crime No.0747 of 2022, under Sections 498-A, 323, 504, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Sardhana, district Meerut. In the aforesaid FIR, seven persons, namely, Surendra @ Kala-applicant herein (husband); Rambhool (father-in-law); Sohanviri (mother-in-law); Amit (Jeth); Sumit (Jeth); Roshni (Jethani) and one wife of Amit have been nominated as named accused.

The gravamen of the allegations made in the first information report apart from the usual description about marriage is to the effect that demand of additional dowry by way of a four wheeler and rupees five lacs was made by the named accused. But as demand of additional dowry was not fulfilled, physical and mental cruelty was committed upon the deceased. Ultimately, the sister of the first informant was put to death by named accused by strangulating her.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. Accordingly, the inquest (Panchayatnama) of the body of deceased was conducted. 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 deceased was said to be hanging. Thereafter, post-mortem of the body of deceased was conducted. The Doctor, who conducted autopsy of the body of deceased, opined that cause of death of deceased is asphyxia as a result of ante-mortem hanging. However, the autopsy surgeon found following ante-mortem injuries on the body of deceased :

"Ante-mortem Injuries :

- 1. Ligature mark is in the form of pressure front of neck. It measure 19 x 2 cm, 6 cm below from Rt. ear, 3 cm below from Rt. mid jaw, 7 cm below from chin, 2 cm below from Lt. mid jaw, 2 cm below from Lt. ear, 8 cm above from sternal notch.**
- 2. On dissection there are minute pin point hemorrhage below from ligature mark. Underlying muscle are unremarkable. The hyoid bone & thyroid cartilage were intact. On removing neck muscle the underlying C2, C3 vertebra found fracture with bleeding at fracture site. The total circumference of neck at the level of thyroid 29 cm.**
- 3. No external injury seen during post mortem examination other than ligature mark."**

During course of investigation, Investigating Officer examined the first informant and other witnesses and recorded their statements under Section 161 CrPC. 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 applicant alone is fully established in the crime in question. He, accordingly, submitted police report under Section 173 (2) CrPC i.e. charge-sheet dated 28.12.2022, whereby applicant alone has been charge-sheeted under Sections 498-A, 323, 504, 304-B IPC and Section 3/4 Dowry Prohibition Act, whereas the other named accused have been exculpated.

Learned counsel for the applicant submits that though applicant is the husband of the deceased, a named/charge-sheeted accused yet, he is liable to be enlarged on bail. The deceased was a short tempered lady and she took an extreme step of terminating her life by committing suicide by hanging herself. The bona fide of the applicant is further explicit from the fact that the autopsy surgeon, who conducted autopsy of body of the deceased, did not find any external ante-mortem injury on the body of the deceased except for the ligature mark. On the above premise, it is urged by the learned

counsel for applicant that prima facie, the death of the deceased is a suicidal death. In view of above, the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case he is convicted. Learned counsel for applicant then contends that considering the precarious condition of the applicant, inasmuch as, two daughters were born out of the said wedlock therefore, it cannot even be imagined that the applicant shall even abet in the commission of crime as the child would suffer. Attention of the Court was invited to the FIR as well as the statement of the first informant recorded under Section 161 CrPC. With reference to above it is urged by the learned counsel for applicant that though allegations have been made in the FIR with regard to demand of additional dowry of rupees five lacs and a four wheeler by the named accused and on account of non-fulfillment of said demand, mental and physical cruelty was committed upon the deceased but the same are vague and bald allegations, inasmuch as, the same are devoid of material particulars. However, no material particulars in respect of the same have been mentioned in the statement of the first informant under Section 161 CrPC either. He, therefore, contends that in view of the law laid down by the Apex Court in **Kahkashan Kausar @ Sonam & others Vs. State of Bihar (2022) 6 SCC 599**, the said allegations are liable to be ignored by this Court at this stage.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in custody since 21.12.2022. As such, he has undergone approximately one year of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant. He, therefore, contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he 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 vehemently opposed the prayer for bail. They submit that since applicant is the husband of the deceased a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this Court. The deceased was a young lady aged about 24 years whose death has occurred in unnatural circumstance. The occurrence has taken place within seven years of marriage of the deceased and that too in her marital home. As such, the death of the deceased is a dowry death. Since the applicant is the husband of the deceased and an inmate of the house in which the occurrence has occurred therefore, the burden is upon the applicant himself to not only explain

the manner of occurrence but also his innocence in terms of Sections 106 and 113-B of the Evidence Act. However, upto this stage, the applicant has miserably failed to discharge the said burden. They, therefore, contend that no sympathy be shown by this Court in favour of applicant. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, 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 is a suicidal death, the bona fide of the applicant is explicit from the fact that no external ante-mortem injury was found on the body of the deceased by the autopsy surgeon, considering the nature of death of the deceased the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case he is convicted, the allegations made in the FIR with regard to alleged demand of additional dowry and commission of cruelty upon the deceased in pursuit of the same are vague and bald allegations being devoid of material particulars, the first informant in his statement under Section 161 CrPC has not detailed the manner in which the alleged demand of dowry was made nor the manner in which alleged cruelty was committed upon the deceased, therefore, in view of law laid down by Apex Court in **Kahkashan Kausar @ Sonam & others (supra)**, the aforesaid allegations are prima facie liable to be ignored by this Court at this stage, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted as such the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized, yet in spite of above the learned A.G.A. nor the learned counsel for first informant could point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the proceeding of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (SC) 373 (paragraph 5)**, the clean antecedents of applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail but, without making any comments on the merits of the case, the applicant has made out a case for bail.

Accordingly, the bail application is **allowed**.

Let the applicant **Surendra @ Kala**, involved in aforesaid case crime number, be released on bail on his 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 applicant shall file an undertaking to the effect that he 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law, under section 174-A I.P.C.

(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 him 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his 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 :- 11.12.2023.

Rks.