Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52753 of 2022

Applicant :- Chandrashekhar
Opposite Party :- State of U.P.
Counsel for Applicant :- Ajay Sengar
Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Miss Gunjan Yadav, Advocate, holding brief of Mr. Ajay Sengar, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Chandrashekhar, seeking his enlargement on bail in Case Crime No. 15 of 2020, under Sections 498A, 304B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Gohan, District-Jalaun during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 20.02.2020, a delayed FIR dated 21.02.2020 was lodged by first informant-Jeevanlal (father of the deceased) and was registered as Case Crime No. 15 of 2020, under Sections 498A, 304B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Gohan, District-Jalaun. In the aforesaid FIR, 3 persons namely (1) Chandrashekhar (husband), (2) Neta Valmiki (father-in-law) and (3) Guddi (Mother-in-law) of the deceased have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that marriage of the daughter of first informant was solemnized with Chandrashekhar (applicant herein) 5 years prior to the date of occurrence. At the time of marriage, sufficient amount of goods and dowry were given. However, named accused were dissatisfied with the same. Subsequently, additional demand of dowry and a motorcycle was raised. As demand of additional dowry was not fulfilled, physical and mental cruelty is alleged to have been committed upon the deceased. Ultimately, the daughter of the first informant was put to death.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The inquest (Panchayatnama) of the body of deceased was conducted on 21.02.2020. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased could not be specifically categorized inasmuch as, the cause of death of deceased could not be ascertained. Thereafter, post mortem of the body of deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased, specifically opined that the cause of death of the deceased cannot be ascertained. Accordingly, the viscera of the deceased was preserved. However, no external ante-mortem injury was found by the Autopsy Surgeon on the body of deceased. According to the learned A.G.A., the viscera report dated 18.04.2020, has been received. As per the said report, a foreign chemical compound namely Aluminum Phosphide was found in the body parts of the deceased sent for chemical examination.

7. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of all the named accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 27.05.2020 followed by the supplementary charge sheet dated 04.07.2020.

8. Learned counsel for applicant submits that though applicant is the husband of the deceased, a named and charge sheeted accused yet he is liable to be enlarged on bail. The occurrence giving rise to present criminal proceedings has occurred after expiry of 3 years and almost 10 months from the date of marriage of the applicant. Prima-facie, the death of deceased is a suicidal death. The Autopsy Surgeon, who conducted the autopsy of the body of deceased, did not find any external injury on the body of deceased. As per the viscera report of the deceased referred to above, a foreign chemical compound namely Aluminum Phosphide was found in the body parts of the deceased sent for chemical examination.The same speaks of the bona-fide of applicant.

9. Attention of the Court was then invited to the FIR. With reference to above, the learned counsel for applicant contends that in the FIR giving rise to present criminal proceedings, the allegations made with regard to the demand of additional dowry and commission of physical and mental cruelty upon the deceased

on account of non-fulfillment of additional demand of dowry are vague and bald allegations inasmuch as, the same have not been substantiated by material particulars. In the absence of the same, the said allegations are liable to be ignored by this Court. No attempt has been made by the first informant to explain the same in his statement under Section 161 Cr.P.C. either. To buttress his submission, he has referred to the judgment of the Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599.** It is further contended that 2 other charge sheeted co-accused have already been enlarged on bail.

10. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 04.03.2020. As such, he has undergone more than 3 years and 7 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 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.

11. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits 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 death of deceased has occurred within 7 years of her marriage and at her marital home. As such, the nature of death of deceased is a dowry death. Moreover, the deceased was a young lady aged about 28 years who has died in unnatural circumstance. In view of above, the burden in upon the applicant 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, the applicant has miserably failed to discharge the said burden up to this stage. On the above premise, the learned A.G.A. contends that no sympathy be shown by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

12. Having heard, the learned counsel for applicant, 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 the death of deceased has occurred after expiry of a period of 3 years and almost 10 months from the date

of her marriage, prima-facie, the death of 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 deceased, as per the viscera report, the death of deceased occurred on account of consumption of foreign chemical compound i.e. Aluminum Phosphide, the allegations made in the FIR with regard to the additional demand of dowry and commission of physical and mental cruelty upon deceased on account of non-fulfillment of demand of additional dowry are vague and bald allegations inasmuch as, the same are devoid of material particulars, the manner in which, the alleged demand of additional dowry was made has not been detailed in the statement of the first informant recorded under Section 161 Cr.P.C., copy of which is on record at page 40 of the paper book, 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 applicant 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 applicant 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, applicant has made out a case for bail.

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

14. Let the **applicant-Chandrashekhar**, be released on bail in the aforesaid case crime number on his 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.

15. 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 :- 27.10.2023
Vinay

Digitally signed by :-
VINAY KUMAR
High Court of Judicature at Allahabad