

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44147 of 2023

Applicant :- Santosh Kumar Savita

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Roy Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. The prosecution story in brief is that the first informant's sister namely, Manju was married with the applicant as back as on 18.06.2005 but the applicant and his mother were demanding golden chain, Hero Honda motor cycle as an additional dowry at the relevant point of time, the applicant was running a barber shop and for pucca construction, he used to demand money which could not be fulfilled on account of which, the applicant, his mother, father, paternal uncle Ram Het started tormenting her. In the month of December, 2006, the applicant, his paternal uncle went to Chitrakoot along with his sister and she did not return with them on query, it was informed that they dropped her at Hamirpur, thereafter, he met the accused persons several times but on one pretext or the other, he could not be permitted to meet her and in the meantime, the accused applicant left the house and recently, it was revealed that the applicant is residing at Kanpur Dehat and has solemnised another marriage.

3. Learned counsel for the applicant submits that marriage of the applicant was solemnised with the informant's sister on 18.06.2005, thereafter in the month of August 2005, the deceased went to her parental house on the festival of Raksha Bandhan and when she did not return, the applicant went to bring her back, where he came to know that his wife had gone with some other person, immediately the applicant sent a complaint dated 15.10.2005 before the Station House Officer, Kotwali Orai,

District Jalaun, copy of which is annexed as Annexure-2 to the affidavit accompanying the bail application. Learned counsel further submits that the informant's has stated in the F.I.R. that the deceased had gone to Chitrakoot with the applicant and his paternal uncle in the month of December, 2006 and she did not return back, when he made query about her, the applicant and his uncle told him that they have dropped her at Hamirpur, who did not return after a considerable time, inspite of the same, no complaint whatsoever has been registered by the informant and after a lapse of more than 18 years, the F.I.R. has been lodged, in which during the investigation, the alleged Saria is said to have been recovered on the pointing of the applicant, when in fact, no such weapon has been recovered and the alleged recovery is false. He further submits that that the alleged weapon is said to have been recovered after a lapse of more than 18 years thus, it is unbelievable that the accused would keep the weapon for 18 years, which cannot cannot be believed by a man of ordinary prudence. Learned counsel further submits that when the wife of the applicant had gone away with someone, the informant's side were well aware of the fact thus they did not made complaint, on the other hand, the applicant had lodged a missing report. Learned counsel next argued that in the meantime, the applicant solemnised second marriage and was living peacefully at Kanpur Dehat since, out of the said wedlock, there was no issue thus, the informant was making pressure upon the applicant to transfer 1/2 of his property share in his favour on refusal, the instant prosecution has been launched after a lapse of more than 18 years. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 18.04.2023, having no criminal history.

4. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by

contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

5. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

6. Let applicant **Santosh Kumar** involved in Case Crime No.248 of 2023 under Sections 304-B, 498A I.P.C., and Section 3/4 of Dowry Prohibition Act, Police Station Kotwali Orai, District Jalaun, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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.

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

7. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail in accordance with law.

8. The bail application is allowed.

Order Date :- 17.10.2023

S.Ali