

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44943 of 2023

Applicant :- Smt Seesa Alias Seema

Opposite Party :- State of U.P.

Counsel for Applicant :- Om Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Om Prakash, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Smt Seesa Alias Seema seeking her enlargement on bail in Case Crime No. 101 of 2023 under section 498A, 304B, 323 IPC and Section 3/4 D.P. Act, Police Station- Moth, District-Jhansi, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 5.5.2023, a belated FIR dated 6.5.2023 was lodged by first informant Neelam and was registered as Case Crime No. 101 of 2023 under section 498A, 304B, 323 IPC and Section 3/4 D.P. Act, Police Station- Moth, District-Jhansi. In the aforesaid FIR, four persons namely, Akash (husband), Sisa (mother-in-law), Patal (Devar) Vikas (devar) have been nominated as named accused.

Learned counsel for applicant submits that applicant is named as well as charge sheeted accused, inasmuch as charge sheet has already been submitted against applicant and husband of deceased on 1.8.2023, yet applicant is liable to be enlarged on bail. He has next invited the attention of Court to the provisions contained in proviso to Section 437 Cr.P.C. and on basis thereof he contends that since applicant is a lady she is liable to be enlarged on bail. The bonafide of applicant is explicit from the fact that the autopsy surgeon who conducted autopsy of the body of deceased did not find any other external ante-mortem injury on her body except the ligature mark. Applicant cannot be said to be the beneficiary of alleged demand of dowry. The deceased was a short tempered lady and she has taken extreme step of committing suicide by hanging herself.

Even otherwise, applicant is a woman of clean antecedents inasmuch as she has no criminal history to her credit except the present one. Applicant is in jail since 22.6.2023. As such, she has undergone more than four months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized, However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore she does not deserve any indulgence by this Court. However, he could not dislodge the factual and legal submissions urged by 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, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that applicant is mother-in-law of the deceased, applicant being a lady, is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C, bonafide of applicant is explicit from the fact that except for the ligature mark no other ante-mortem injury was found on the body of deceased, prima facie the death of deceased is a suicidal death, applicant cannot be said to be the beneficiary of alleged demand of dowry, the clean antecedents of applicant, the period of incarceration undergone, police report in terms of Section 173 (2) Cr.P.C. having been submitted, therefore, the entire evidence sought to be relied upon by prosecution stands crystalized, yet inspite of the above the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the course of trial, therefore, irrespective of the objection raised by the learned A.G.A. in opposition to the present application for bail, but without making any comment on the merits of the case, applicant has made out a case for bail. Accordingly, the bail application is **Allowed**.

Let the applicant **Smt Seesa Alias Seema**, be released on bail in the aforesaid case crime number on her 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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 :- 26.10.2023

Arshad