

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44158 of 2023

Applicant :- Smt Preeti

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Manoj Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant-Smt. Preeti seeking her enlargement on bail in Case Crime No.459 of 2022, under Sections 302, 452, 34 IPC, Police Station Shahganj, District Agra, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 27.08.2022, a prompt F.I.R. dated 27.08.2022 was lodged by first informant, namely, Smt. Preeti (widow of the deceased) and was registered as Case Crime No.0459 of 2022, under Sections 302, 452 IPC, Police Station Shahganj, District Agra. In the aforesaid F.I.R., two persons namely, Spanil and Ankit have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused entered the house of the first informant and thereafter with a country made pistol fired at the husband of the first informant, namely, Sumer Singh @ Bobby on account of which he died on the spot.

After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned Case Crime number in terms of Chapter XII CrPC. The inquest (Panchayatnama) of the body of deceased was conducted on 27.08.2022. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was categorized as homicidal and the cause of death of deceased was specified as gun-shot injury sustained by the deceased on his head. Subsequent to above, the post-mortem of body of the deceased was conducted. The autopsy surgeon who conducted autopsy of body of the deceased found following ante-mortem injuries on the body of deceased :-

"Ante-mortem injuries :-

1. Fire arm wound of entry (4cm x 2 cm) over left side forehead, 4 cm above left eyebrow, gun powder present, bullet recovered from right arm back. Track

Mark present from brain to right arm-back. Track mark present from brain to right arm through neck & shoulders."

In the opinion of autopsy surgeon, the cause of death of the deceased was Coma as a result of ante-mortem injuries.

During course of investigation, Investigating Officer examined the first informant, namely, Smt Preeti (applicant herein) and other witnesses, namely, Tara Chandra; Mohit; Ramesh Kumar; Smt. Shavitri; Smt. Rani, Pankaj; Suraj; Sundar Jitendra Chauhan; Rashmi; Smt. Asha; Ram Kishore Prajapati @ Bhagat; Pooran Singh; Prakash and eye-witness Sagar Kumar and Gaurav under Section 161 CrPC. On the basis of the statements of the witnesses Sagar Kumar and Gaurav, whose statement were recorded under Section 161 CrPC, the crime in question was alleged to have committed by not named accused Dheeraj. On the basis of above, accused Dheeraj was arrested and in his confessional statement admitted of himself having committed the crime in question. However, this accused in his confessional statement has further stated that above-mentioned criminality was committed by him with the conspiracy of present applicant Smt. Preeti, who is also first informant in the present case. The weapon of assault i.e. country made pistol and empty cartridges used in the commission of crime in question was recovered on the pointing out of accused Dheeraj.

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 not named accused Dheeraj and the present applicant who is also not named in the FIR is established in the crime in question. He, accordingly, submitted the charge-sheet dated 03.12.2022, whereby Dheeraj and present applicant (Smt. Preeti) have been charge-sheeted under Sections 302, 452, 34 IPC.

Learned counsel for the applicant contends that applicant is innocent. Though applicant is not named in the F.I.R. but she is a charge-sheeted accused. However, irrespective of above, applicant is liable to be enlarged on bail. According to the learned counsel for applicant since the applicant is a lady therefore she is entitled to the benefit of the provisions contained in proviso to Section 437 CrPC. Further more, the complicity of the applicant in the crime in question has emerged as per the confessional statement of charge-sheeted co-accused Dheeraj. As per the said confessional statement, the role of assault has been assigned to co-accused Dheeraj himself. In the said statement of co-accused Dheeraj, it is conspiracy which has been alleged against the applicant. According to the learned counsel for applicant, conspiracy is a closed door affair and therefore, subject to trial evidence. Furthermore upto this stage there is nothing on record to

corroborate the confession of the co-accused qua the criminality alleged to have been committed by the applicant. On the above conspectus, he therefore contends that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a woman of clean antecedents having no criminal history to her credit except the present one. Applicant is in jail since 11.09.2022. As such, she has undergone more than one year and two months of incarceration. 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 applicant stands crystalized. Up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He, therefore, submits that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a charge-sheeted accused, therefore, she does not deserve any indulgence by this Court. The crime in question was committed with the conspiracy of the applicant with charge-sheeted co-accused Dheeraj. The deceased is no one else but the husband of the applicant. Considering the aforesaid incriminating circumstances of the case, the learned A.G.A. contends that no sympathy be shown by this Court in favour of applicant. However, he 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 leaned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, complicity of the accused, accusation made, nature and gravity of offence and coupled with the fact that applicant is not named in the FIR, the complicity of applicant has emerged in the confessional statement of charge-sheeted co-accused Dheeraj, as per the said confessional statement of aforementioned co-accused, the role of assault upon the deceased is assigned to co-accused Dheeraj himself as such the case of present applicant is clearly distinguishable from aforesaid co-accused, the complicity of present applicant is alleged to be that of a conspirator, conspiracy is a closed door affair and therefore subject to trial evidence, however upto this stage there is nothing on record to corroborate the confession of co-accused and the criminality alleged to have been committed by applicant, the judgement of the Supreme Court in **Kashmira Singh Vs. State of Madhya Pradesh 1952 (1) SCC 275**, since the applicant is a lady therefore she is entitled to the benefit of the provisions contained in proviso to Section 437 CrPC, considering the fact that since charge-

sheet has already been submitted therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet inspite 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 clean antecedents of the applicant, the period of incarceration undergone, 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, the applicant has made out a case for bail.

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

Let the applicant **Smt. Preeti**, involved in aforesaid case crime number, be released on bail on her 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 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 her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure 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 her, 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 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 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 :- 1.12.2023.

Rks.