

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44738 of 2023

Applicant :- Subash Patel

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajai Kumar Singh Kushwaha, Sandeep Kumar Yadav

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. It has been argued by learned counsel for the applicant that that the F.I.R. was lodged by the brother of the deceased with the allegation that the marriage of his sister was solemnized with the applicant about six years ago, today, i.e., 23.08.2020 at 6:40 p.m. he received a phone call that her sister had committed suicide by hanging herself, when he along with his other family members reached at the house of in-laws of her sister, she was lying on the ground and there were several marks of assault on her face. It has further been stated in the F.I.R. that the the in-laws of the deceased were used to demand make demand of dowry in the form of cash and on account of non fulfillment thereof the deceased was being harassed and maltreated.
3. Learned counsel for the applicant submits that applicant is the husband of the deceased and has falsely been implicated in the case. No such incident as alleged by the prosecution took place. The relations between the applicant with her wife were cordial except some minor disputes which always arose between husbands and wives. General allegations for demand of dowry and on account of non fulfillment thereof, causing cruelty to the deceased has been made in the first information report against all the named accused persons including the applicant. Neither any demand was made by the in-laws of the deceased including the applicant, nor any complaint was ever made after the marriage or prior to the date of incident.
4. Learned counsel for the applicant further submits that as per the postmortem report of the deceased cause of death is asphyxia due

to ante mortem hanging. It has also been submitted that except one ligature mark all around the neck no other injury was found on the person of the deceased, which shows that deceased had committed suicide by hanging herself. Thus, it is alleged that no offence as alleged has been committed by the applicant.

5. Learned counsel for the applicant further submits that the statement of complainant, Sujit Patel was recorded before the court below on 25.08.2023, in which he has stated that her sister never told her about her harassment and maltreatment made by her in-laws or the applicant, her sister was under mental pressure and stress due to illness of her son, it appears that on account of mental stress she has committed suicide, thus, the complainant has become hostile. 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 08.09.2022, having no criminal history.

6. Per contra, learned A.G.A. has 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. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

7. 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, this Court is of the view that the applicant may be enlarged on bail.

8. Let the applicant- **Subash Patel**, involved in Case Crime No. 254 of 2022, under Sections 498-A, 304-B, 302 I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Lohta, District Varanasi, be enlarged 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.

9. 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 and send the applicant to prison.

10. The bail application is **allowed**.

Order Date :- 19.10.2023

Mustaqeem.