

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45191 of 2023

Applicant :- Nanhiya @ Nanhi

Opposite Party :- State of U.P.

Counsel for Applicant :- Vivek Kumar Mishra, Dharmendra Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Vivek Kumar Mishra, the learned counsel for applicant and the learned A.G.A. for State.

This bail application has been filed by the applicant Nanhiya @ Nanhi seeking her enlargement on bail in Case Crime No. 190 of 2023, under Sections 302, 201, 120B, 34 IPC, P.S. Garhmukteshwar, District Hapur, during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred in between 24.4.2023 to 28.4.2023 a delayed F.I.R. dated 28.4.2023 was lodged by first informant Madan Singh (brother of the deceased) and was registered as Case Crime No. 190 of 2023, under Sections 302, 201, 120B IPC, P.S. Garhmukteshwar, District Hapur. In the aforesaid F.I.R., three persons namely Ajay, Jaspal and Krishna have been nominated as named accused, whereas two unknown persons have also been arraigned as accused.

According to the learned counsel for applicant, the complicity of applicant in the crime in question is alleged on the ground that the applicant indulged in telephonic conversation with the deceased. As per the material collected by the Investigating Officer, applicant at best can be said to be a conspirator of the crime. According to the learned counsel for applicant, conspiracy is a closed door affair and therefore subject to trial evidence.

Learned counsel for the applicant submits that applicant is innocent. Applicant is not named in the F.I.R. Present case is a case of honour killing, inasmuch as the deceased is said to be in love affair with the applicant.

It is lastly contended that since applicant is an unmarried lady, therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr. P. C. As such, she is liable to be enlarged on bail.

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 03.05.2023. As such, she has undergone more than 5 and 1/2 months of incarceration. 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. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. As such the 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 opposed the prayer for bail. He submits that since applicant is a charge sheeted accused, therefore, she does not deserve for any indulgence by this Court. However, he could not dislodge the factual/legal submissions urged by the 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, the learned counsel representing first informant upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that though it is alleged that the the deceased was in love affair with the applicant, applicant indulged in telephonic conversation with the deceased, however, complicity of the applicant in the crime in question cannot be established only on the basis of of the same, conspiracy is a closed door affairs and therefore subject to trial evidence, applicant being a lady is entitled to the benefit of the provisions contained in proviso to Section 437 Cr. P. C., 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, however, 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 judgement of the Supreme Court in **S. Subash Chand Gangwal Vs. State of Maharashtra, 2023-LiveLaw SC 373 (para 5)** therefore, irrespective of the objections

raised by the the learned A.G.A. for state in opposition to the present application for bail, but without commenting on the merits of the case, the applicant has made out a case for bail.

Accordingly, bail application is **allowed**.

Let the applicant **Nanhiya @ Nanhi** 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 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 :- 27.10.2023

HSM