

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44863 of 2023

Applicant :- Guddi Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Ravi Shankar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Ms. Kusum Lata, Advocate holding brief of Mr. Ravi Shankar Tripathi, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Instant application for bail has been filed by applicant-Guddi Devi seeking her enlargement on bail in Case Crime No. 43 of 2023 under Sections 498A,304B I.P.C. and Sections 3/4 D. P. Act, Police Station-Bansgaon, District-Gorakhpur, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 25.01.2023, a prompt F.I.R. dated 25.01.2023 was lodged by first informant Smt. Neelam Sharma (mother of the victim) and was registered as Case Crime No.43 of 2023 under Sections 498A,304B I.P.C. and Sections 3/4 D. P. Act, Police Station-Bansgaon, District-Gorakhpur. In the aforesaid F.I.R. six persons namely Ajay @ Manjnu, Vinod Sharma, wife of Vinod sharma (applicant herein), Shaktiman, Chhotu and Deva have been nominated as named accused.

5. At the very outset, the learned counsel for applicant contends

that named co-accused Vinod Sharma, father-in-law of the deceased i.e. husband of present applicant has already been enlarged on bail by this Court vide order dated 19.07.2023 passed in Criminal Misc. Bail Application No. 29302 of 2023 (Vinod Sharma Vs. State of U.P.). For ready reference, the order dated 19.07.2023 is reproduced herein-under:

"By means of this bail application the applicants have prayed to be enlarged on bail in Case No. 43 of 2023 at Police Station- Bansaon, District- Gorakhpur under Sections 498-A, 304-B, IPC and Section 3/4 Dowry Prohibition Act. The applicant is in jail since 07.04.2023.

The bail application of the applicant was rejected by learned trial court on 11.05.2023.

The following arguments made by Sri Ravi Shankar Tripathi, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Sri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

- (1). The applicant is father in law of the deceased.***
- (2) The applicant never harassed the deceased nor did he ever demand dowry.***
- (3). The applicant never interfered in the marital life of the deceased.***
- (4). The applicant is bereaved by the death of his daughter in law.***
- (5). The deceased was a sensitive lady who was prone to extreme reactions over trivial issues. On the fateful day after some minor altercation with a member of the household she took the extreme step of committing suicide. She consumed some poisonous substance.***
- (6). The applicant was not named as an offender in the suicide note which was left behind by the victim.***
- (7). The viscera report has not been produced till date.***
- (8). The applicant does not have any criminal history apart from***

this case.

(9). The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Vinod Sharma be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 19.7.2023 "

6. Learned counsel for applicant contends that applicant is the mother-in-law of deceased. On the above premise, the learned counsel for applicant contends that the case of present applicant is similar and identical to that of bailed out co-accused **Vinod Sharma**. He also contends that there is no such distinguishing feature on the basis of which case of present applicant can be so distinguished from the aforesaid bailed out co-accused so as to deny him bail. On the above premise, the learned counsel for applicant contends that in view of above and for the facts and reasons recorded in the order dated 19.07.2023 of co-accused **Vinod Sharma** applicant is also liable to be enlarged on bail on the ground of parity. It is then contended that applicant is the mother-in-law of the deceased therefore, she is entitled to the benefit of the provisions contained in proviso to section 437 Cr.P.C. Bonafide of

applicant is also explicit from the fact that in the opinion of Autopsy Surgeon, who conducted autopsy of the body of the deceased, no internal or external ante-mortem injury was found on the body of the deceased. Applicant cannot be said to be the beneficiary of the alleged demand of dowry. No abetment, instigation or conspiracy can be inferred against applicant from the record either. Husband of the deceased is already languishing in jail.

7. 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 custody since 07.04.2023. As such, she has undergone almost eight months of incarceration. The police report (charge-sheet) 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 crystallised. However, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. He therefore contends 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.

8. Per contra, the learned A.G.A. has opposed the prayer for bail. However, he could not dislodge the factual and legal submissions urged by learned counsel for applicant with reference to the record at this stage.

9. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that similarly situate and circumstanced co-accused Vinod Sharma has already

been enlarged on bail by this Court, the learned A.G.A. could not distinguish the case of present applicant from that of bailed out co-accused so as to deny her bail, the applicant being a lady is therefore entitled to the benefit of the provisions contained in proviso to section 437 Cr.P.C. prima-facie the applicant cannot be said to be the beneficiary of the alleged demand of dowry, 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 on 18.04.2023, therefore the entire evidence sought to be relied upon by the prosecution against applicant stand crystallised, yet in spite of above, the learned AG.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore irrespective of the objections raised by the learned A.G.A. in opposition to present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

10. Accordingly, present application for bail is **allowed**.

11. Let the applicant-**Guddi Devi** involved in aforesaid case crime number be released on bail 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) Applicant will not tamper with prosecution evidence.

(ii) 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) Applicant will not indulge in any unlawful activities.

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

12. 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 of applicant and send her to prison

Order Date :- 7.12.2023

YK