

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44850 of 2023

Applicant :- Arjun

Opposite Party :- State of U.P.

Counsel for Applicant :- Gaurav Sisodia

Counsel for Opposite Party :- G.A., Virendra Singh

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37520 of 2023

Applicant :- Shanti Devi Alias Genda Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Gaurav Sisodia

Counsel for Opposite Party :- G.A., Virendra Singh

Hon'ble Rajeev Misra, J.

1. Heard Mr. Raj Kamal Tripathi, Advocate holding brief of Mr. Gaurav Sisodia, the learned counsel for applicants, the learned A.G.A. for State and Mr. Virendra Singh, the learned counsel representing first informant.

2. Perused the record.

3. These applications for bail have been filed by applicants-Arjun and Shanti Devi Alias Genda Devi seeking their enlargement on bail in Case Crime No. 115 of 2023 under Sections 323, 304B, 498A I.P.C. and Section 3/4 D. P. Act, Police Station-Jaitipur, District- Shahjahanpur, during the pendency of trial.

4. Record shows that marriage of applicant Arjun was solemnized with Atarkali on 18.06.2020 in accordance with Hindu Rites and Customs. From the said wedlock a male child was born. However, just after expiry of a period of two years and nine months from the

date of marriage of applicant, an unfortunate incident occurred on 06.07.2019 in which the wife of applicant died as she committed suicide by hanging herself.

5. Information regarding aforesaid occurrence at the police station concerned was not given by applicant or any of his family members. However, father of co-accused Laturi is alleged to have informed the family members of the deceased regarding death of the deceased. Subsequently, the first informant Rameshwar (father of the deceased) lodged an F.I.R. dated 06.04.2023 and was registered as Case Crime No. 115 of 2023 under Sections 498A, 304B, 323 I.P.C. and Section 3/4 D. P. Act, Police Station-Jaitipur, District- Shahjahanpur. In the aforesaid F.I.R. four persons namely Arjun (applicant herein), Laturi, Shanti Devi @ Genda Devi (applicant herein) and Roshani have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that marriage of the daughter of first informant was solemnized with Arjun. At the time of marriage a sum of Rs. 5.7 Lakhs alongwith gold jewellery and two buffalos and eight lakhs of dowry was given. However, the in-laws of the daughter of first informant were not satisfied with the same. The F.I.R. further records that subsequently, additional demand of dowry was made. On account of non-fulfillment of additional demand of dowry, physical and mental cruelty was committed upon the daughter of first informant.

7. After aforementioned F.I.R. was lodged, the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Thereafter, inquest (panchayatnama) of the body of deceased was conducted on

06.04.2023. In the opinion of the witnesses of inquest (panch witnesses), the nature of death of deceased was categorized as suicidal and cause of death of deceased was specified as hanging. Subsequent to above, the post-mortem of the body of the deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased opined that that cause of death of deceased is asphyxia as a result of ante mortem hanging. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

" A ligature mark 26.0 cm x 2.0 cm around the neck, obliquely upward between chin and larynx, 5 cm below left Ear and 4.0 cm below mid of chin interrupted c the gap of 4.0 cm Rt. side of neck the groove is dry and parchment like on section the subcutaneous tissue under the ligature mark white and glistening, dribbling of dry saliva mark present on angle of left side of mouth."

8. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. The witnesses so examined have substantially supported the F.I.R. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of three of the named accused namely Arjun (applicant herein), Laturi, Shanti Devi @ Genda Devi (applicant herein) is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 06.06.2023, whereby aforementioned three named accused have been charge sheeted under Section 323, 304B, 498A I.P.C. and Section 3/4 D. P. Act whereas the other named accused Roshni has been exculpated.

9. At the very outset, the learned counsel for applicants contends that the co-accused Laturi (father-in-law) of deceased has already been enlarged on bail vide order dated 18.09.2023 passed in Criminal Misc. Bail Application No. 40427 of 2023. For ready reference, the same is reproduced herein-under:

"By means of the the bail application the applicant has prayed to be enlarged on bail in Case Crime No.115 of 2023 at Police Station-Jaitipur, District-Shahjahanpur under Sections 498A, 323,304B I.P.C. and Section 3/4 of Dowry Prohibition Act. The applicant is in jail since 02.06.2023.

The bail application of the applicant was rejected by the learned trial court on 17.07.2023.

The following arguments made by Shri Raj Kumar Tripathi, learned counsel holding brief of Shri Gaurav Sisodia, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Ms. Sujata Chaudhary, learned AGA from the record, entitle the applicant for grant of bail:

- 1. The applicant is the father-in-law of the deceased.*
- 2. The applicant never harassed the deceased nor did he demand dowry.*
- 3. They never interfered in the marital life of the deceased and her husband. The applicant is bereaved by the death of his daughter-in-law.*
- 4. The deceased was a sensitive lady who was prone to extreme reactions even over trivial issues.*
- 5. On the fateful day, after a minor disagreement with the members of the households over the dates of deceased to visit her parental house, she flew into a fit of rage and took the extreme step of ending her life. She committed suicide by hanging.*
- 6. The postmortem report opines the cause of death as asphyxia due to antemortem hanging.*
- 7. Injuries depicted in the postmortem report consistent with hanging are:*
 - (i) Nature of ligature mark.*
 - (ii). No status has been recorded against the column of hyoid bone.*
- 8. The applicant did not aid or abet the suicide.*
- 9. Prosecution evidence does not connect the applicant with the offence.*
- 10. The prerequisite for attracting the presumption and the reversing the burden of proof are not established in the facts and circumstances and*

evidence of the case.

11. The applicant does not have any criminal history apart from the instant case.

12. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial 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- Laturi 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 :- 18.9.2023 "

10. With reference to above, the learned counsel for applicants contends that aforementioned bailed out co-accused and applicants have been charge sheeted under the same sections. Moreover, applicant Shanti Devi @ Genda Devi is the mother-in-law of deceased, He thus contends that the case of the applicants Santi Devi @ Genda Devi is similar and identical to aforesaid co-accused. There is no such distinguishing feature on the basis of which, the case of present applicant can be so distinguished from aforementioned bail out co-accused so as to deny her bail.

11. Learned counsel for applicants next contends that though the applicant-Arjun is husband of deceased and applicant-Shanti Devi @ Genda Devi is mother-in-law of deceased, who are named as well as charge-sheeted accused, yet they are liable to be enlarged on bail. With reference to the material on record, he submits that the deceased was a short tempered lady and she has taken the

extreme step of terminating her life by hanging herself. Bonafide of applicants is also explicit from the fact that in the opinion of Autopsy Surgeon, who conducted autopsy of the body of the deceased, the cause of death of deceased is asphyxia as a result of ante mortem hanging. As such, prima facie, the death of deceased is a suicidal death. Moreover no other internal or external ante-mortem injury except the ligature mark was found on the body of the deceased by the autopsy surgeon. Applicant Shanti Devi @ Genda Devi, who is mother-in-law of deceased cannot be said to be beneficiary of the alleged demand of dowry. Moreover, applicant Shanti Devi @ Genda Devi is lady (mother-in-law of deceased) and therefore, she is entitled to the benefit of the provisions contained in Section 437 Cr.P.C. No abetment, instigation or conspiracy can be inferred against aforesaid applicant from the record either. Allegations made in the F.I.R. with regard to demand of additional dowry and commission of physical and mental cruelty upon deceased on account of non-fulfilment of additional demand of dowry are false and concocted. They are vague and bald allegation inasmuch as the same are devoid of material particulars. As such, the same are liable to be ignored by this Court at this stage in view of the law laid down by Apex Court in **Kahkashan Kausar @ Sonam and others Vs. State of Bihar and Others, (2022) 6SCC 599.**

12. It is then contended by the learned counsel for applicants that from the wedlock of applicant and the deceased, a male child was born who is aged about less than a year. Considering the precarious condition of the applicant, the learned counsel for applicant contends that it is impossible to imagine that applicant-Arjun was shall cause the death of the deceased. It is thus urged that applicants are liable to be enlarged on bail.

13. Even otherwise applicants are of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicant-Arjun is in custody since 21.04.2023. As such he has undergone approximately seven months of incarceration. Applicant Shanti Devi @ Genda Devi is in custody since 02.06.2023. As such, she has undergone more than five and a half months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. (charge sheet) has already been submitted therefore, the entire evidence sought to be relied upon by the prosecution against applicants stands crystallised. Upto this stage, no such circumstance has emerged on the basis of which it can be said that the custodial arrest of applicants is absolutely necessary during the pendency of trial. He therefore submits that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

14. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since the applicant-Arjun is the husband of the deceased and applicant-Shanti Devi @ Genda Devi is the mother-in-law of the deceased, who are named and charge sheeted accused therefore they do not deserve any indulgence by this Court. The deceased has committed suicide just after two years and 9 months of her marriage on account of the act of named as well as charge sheeted accused. The death of the deceased is an unnatural death. Occurrence has taken place in the house of applicants and within seven years of the marriage of the deceased. Therefore the death of the deceased is a dowry death. By reason of above, the burden is upon the applicants to not only explain the manner of occurrence but also their innocence in terms

of Sections 106 and 113B of Evidence Act. However, the applicants have miserably failed to discharge the said burden upto this stage. They therefore submits that applicants do not deserve any sympathy of this Court. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

15. Having heard the learned counsel for applicants, the learned A.G.A. for State, the learned counsel representing first informant, consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicants, coupled with the fact that since applicant-Santi Devi @ Genda Devi is a lady therefore she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C, prima facie the death of the deceased is suicidal death, bonafide of the applicant is explicit from the fact that the autopsy surgeon who conducted autopsy of the body of the deceased did not find any other external or internal ante-mortem injury on the body of the deceased except the legature mark, allegations made in the F.I.R. with regard to demand of additional dowry and commission of mental and physical cruelty upon the deceased on account of non-fulfillment of the same are prima facie vague and bald allegations being devoid of material particulars, no attempt has been made by the first informant to explain the same in his statement under Section 161 Cr.P.C. as such, the same are liable to be ignored by this Court at this stage in view of judgement of Supreme Court in **Kahkashan Kausar @ Sonam and others (supra)**, no such circumstance has emerged on the record on the basis of which it can be concluded that the applicants have abated, instigated or conspired in the commission of the crime or the deceased committed suicide on account of an immediate act of applicants,

the applicants are not liable to be awarded the maximum sentence under Section 304B I.P.C. in case they are connected, the clean antecedents of applicants, 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 crystallised, yet in spite of above, the learned A.G.A. could not point out any such circumstance from record, necessitating the custodial arrest of applicant during the pendency of trial, the judgement of Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for applicants in opposition to present application for bail but without expressing any opinion on the merits of the case, applicants have made out a case for bail.

16. Accordingly, present applications for bail are **allowed**.

17. Let the applicants-**Arjun and Shanti Devi Alias Genda Devi** involved in aforesaid case crime number be released on bail on their 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) Applicants will not tamper with prosecution evidence.

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

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

18. 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 them to prison

Order Date :- 22.11.2023

YK