

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 44912 of 2023

**Applicant :-** Shakeela Begum @ Amina

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Mukul Yadav

**Counsel for Opposite Party :-** G.A., Satish Solanki

Connected with

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 44794 of 2023

**Applicant :-** Sharafat Ali

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Mukul Yadav

**Counsel for Opposite Party :-** G.A., Satish Solanki

**Hon'ble Rajeev Misra, J.**

1. Heard Mr. Mukul Yadav, the learned counsel for applicants, the learned A.G.A. for State and Mr. Satish Solanki, the learned counsel representing first informant.

2. Perused the record.

3. These applications for bail have been filed by applicants-Shakeela Begum @ Amina and Sharafat Ali, seeking their enlargement on bail in Case Crime No. 81 of 2018, under Sections 498-A, 304-B, 323 IPC, alternate Sections 302, 120-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Madrak, District-Aligarh during the pendency of trial i.e. Sessions Trial No. 510 of 2019 (State Vs. Sharafat and Another) now pending in the Court of Additional District and Sessions Judge, F.T.C., Court No.-1, Aligarh.

4. Record shows that in respect of an incident, which is alleged to have occurred on 14.03.2018, a delayed FIR dated 15.03.2018 was lodged by first informant-Wazid Ali (father of the deceased) and was registered as Case Crime No. 81 of 2018, under Sections 498-A, 304-B, 323 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Madrak, District-Aligarh. In the aforesaid FIR, 3 persons namely (1) Afsar Ali (Husband), (2) Sharafat Ali (Father-in-law) and (3) Shakeela Begum (Mother-in-law) of the deceased have been nominated as named accused.

5. After completion of statutory investigation of aforementioned case crime number, Investigating Officer ultimately, submitted the charge sheet dated 11.06.2018 whereby only one of the named accused Afsar Ali (Husband of the deceased) was charge sheeted under Sections 498-A, 304-B IPC, alternate Sections 302, 120-B IPC and Sections 3/4 Dowry Prohibition Act and 2 other not named accused Sarfuddin @ Lehtu and Bablu were charge sheeted under Sections 302, 120-B IPC.

6. After submission of above-mentioned charge sheet, cognizance was taken upon same by concerned Magistrate. However, as offence complained of is exclusively triable by the court of Sessions, concerned Magistrate, consequently committed the case to the court of Sessions. Resultantly, Sessions Trial No. 486 of 2018 (State Vs. Afsar and Others) came to be registered.

7. During the pendency of trial, first informant Wazid Ali deposed before court below as PW-1. Thereafter, the mother of the deceased namely Smt. Meena also deposed before court below as PW-2. As per the statements of aforesaid witnesses, the complicity of named but not charge sheeted accused i.e. applicant herein also came to surface. Accordingly, prosecution filed an application under Section 319 Cr.P.C. praying therein that present applicants be also summoned to face aforementioned trial. The said application came to be allowed by court below on 03.08.2019. However, it was directed by court below that the trial of present applicants shall be separately registered. Consequently, Sessions Trial No. 510 of 2019 (State Vs. Sharafat and Another) came to be registered and now is pending in the Court of Additional District and Sessions Judge, F.T.C., Court No.-1, Aligarh.

8. Learned counsel for applicants submit that applicants are the mother-in-law and the father-in-law of the deceased. The marriage of the son of the applicants with the deceased was solemnized in the year, 2013. The occurrence has occurred after 5 years from the date of marriage of the son of the applicants. In the FIR that was lodged in respect of the aforementioned occurrence, applicants were nominated as named accused. However, Investigating Officer during course of investigation did not find any such material on the basis of which, the complicity of applicants could be said to be established in the crime in question. With reference to the judgment of the Supreme Court in S Mohammed Ispahani Vs. Yogendra Chandak and Others, (2017) 16 SCC 226, the learned counsel for applicants submit that an accused can be summoned under Section 319 Cr.P.C. only when strong and cogent evidence has emerged against him. Mere complicity of the applicants in the crime in question is not a ground sufficient enough to summon an additional accused under Section 319 Cr.P.C. The court below while passing the order dated 03.08.2019 has ignored aforesaid aspect of the matter. Furthermore, applicants being the father-in-law and mother-in-law of the deceased cannot be said to be the beneficiary of the alleged demand of dowry. Furthermore, applicant-Shakeela Begum @ Amina is a lady and therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C. It is only after the entire prosecution evidence is recorded that the complicity of the applicants in the crime in question can be fully established.

9. Even otherwise, applicants are of clean antecedents having no criminal history to their credit except the present one. Applicants are in jail since 22.06.2023. As such, they have undergone more than 5 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystallized. Applicants have been summoned by court below in exercise of jurisdiction under Section 319 Cr.P.C. However, except for the complicity of applicants nothing more was emerged against applicants as per the statements of PW-1 and PW-2. However, up to this stage, no such circumstance has emerged necessitating the

custodial arrest of applicants during the pendency of trial. On the above premise, he 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.

10. Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that since complicity of applicants in the crime in question is prima-facie established as per the statements of PW-1 and PW-2 recorded by court below detailed above, therefore, they do not deserve any indulgence by this Court. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

11. Having heard, the learned counsel for applicants, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that applicants are the father-in-law and mother-in-law of the deceased, therefore, they cannot be said to be the beneficiary of the alleged demand of dowry, applicant-Shakeela Begum @ Amina is a lady and therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., the bona-fide of the applicants is explicit from the fact that the Investigating Officer during course of investigation, did come across any such material on the basis of which, the complicity of applicants stood established in the crime in question, the applicants have been summoned by court below in exercise of jurisdiction under Section 319 Cr.P.C. simply on the basis of statements of PW-1 and PW-2 wherein the complicity of applicants in the crime in question has also come to surface, court below has not recorded categorical findings that as per the material on record strong and cogent evidence has emerged against applicants in the crime in question, the guilt of the applicants, if any, can be established only after the entire prosecution evidence has been recorded, the clean antecedents of applicants, the period of incarceration undergone, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicants during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present applications for bail, but without making any comments on the merits of the case, applicants have made out a case for bail.

12. Accordingly, the bail applications are **allowed**.

13. Let the **applicants-Shakeela Begum @ Amina and Sharafat Ali**, be released on bail in the aforesaid case crime number 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) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/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 HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

**(iii)** IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/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 HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

**(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 THE HIM/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.

14. However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their 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 :- 22.11.2023**

Vinay