

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44984 of 2023

Applicant :- Bhagwanta And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Manoj Kumar Dwivedi, learned counsel for the applicants, Sri Bade Lal Bind, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicants Bhagwanta, Kiran and Ajay Kumar, seeking enlargement on bail during trial in connection with Case Crime No. 65 of 2022, under Sections 498-A, 304-B IPC and Section 3/4 D.P. Act, registered at P.S. Gulriha, District Gorakhpur.

4. The FIR of the matter was lodged on 13.02.2022 by Khetahoon against the applicants, Vijay and Ramanand alleging therein that the marriage of Poonam the daughter of the informant was solemnized with Vijay on 26.04.2018 in which gifts and dowry were given but the accused persons were not satisfied with it and used to torture and harass the deceased. In the meantime, the deceased gave birth a girl. On 13.02.2022 at about 03:00 am the accused persons committed her murder.

5. Learned counsel for the applicants argued that the applicants have been falsely implicated in the present case. It is argued that the applicant no. 1/Bhagwanta is the mother-in-law, applicant no.2/Kiran is the nand and the applicant no.3/Ajay Kumar is the devar of the deceased Poonam. It is argued that general and omnibus allegations have been levelled against the accused persons. It is further argued that the deceased was not found to have received any bodily injury. The doctor conducting the postmortem examination report could not opine regarding the cause of death and as such her viscera was preserved which was

sent for examination and as per its report no chemical poison found in it. It is argued that from the said fact it is clear that the deceased died a natural death. It is further argued that the trial in the present matter has started in which the first informant Khetahoon did not support the prosecution case and has been declared hostile. It is argued that co-accused Ramanand the father-in-law of the deceased has been granted bail by a co-ordinate Bench of this Court vide order dated 12.05.2023 passed in Crl. Misc. Bail Application No. 17759 of 2023 (Ramanand Vs. State of U.P.), copy of the order is annexed as annexure 10 to the affidavit. It is argued while placing para 27 of the affidavit that the applicant no.2 is unmarried girl. He further argued that the applicants have no criminal history as stated in para 18 of the affidavit and are in jail since 24/25.08.2023.

6. Per contra, learned counsel for the State opposed the prayer for bail.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the applicants are the mother-in-law, unmarried nand and devar of the deceased. The cause of death of the deceased could not be ascertained and viscera was preserved. The viscera report states of no chemical poison found in it whereas there is no bodily injury on the deceased. The first informant Khetahoon has been declared hostile before the trial court. Co-accused Ramanand the father-in-law of the deceased has been granted bail.

8. Looking to 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 applicants may be enlarged on bail.

9. Let the applicants **Bhagwanta, Kiran** and **Ajay Kumar**, 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 concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicants will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The 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) The applicants shall file an undertaking to the effect that they 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 applicants will not misuse the liberty of bail in any manner whatsoever. In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under section 82 Cr.P.C., may be issued and if applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under section 174-A I.P.C.

(v) The applicants 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 applicants are 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 them in accordance with law and the trial court may proceed against them under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicants.

10. 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 applicants to prison.

11. The bail application is ***allowed***.

Order Date :- 26.10.2023

M. ARIF

(Samit Gopal, J.)