

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45156 of 2023

Applicant :- Gyan Chandra

Opposite Party :- State of U.P.

Counsel for Applicant :- Safiullah

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Safiullah, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Gyan Chandra seeking his enlargement on bail in Case Crime No. 305 of 2024, under Sections 498A, 304B IPC and Sections 3/4 D.P. Act, P.S. Behjoi, District Sambhal, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 21.6.2023, a prompt F.I.R. dated 21.6.2023 was lodged by first informant Hari Om (father of the deceased) and was registered as Case Crime No. 305 of 2024, under Sections 498A, 304B IPC and Sections 3/4 D.P. Act, P.S. Behjoi, District Sambhal. In the aforesaid F.I.R., five persons namely Satyendra Kumar, Satyaveer, Seema, Gyanchandra and wife of Gyanchandra have been nominated as named accused.

Learned counsel for applicant submits that applicant is the father-in-law of deceased. Though applicant is a named as well as charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant on 15.8.2023 along with two others i.e. Gyanchandra, Satyendra Kumar (husband) and mother-in-law of the deceased, yet he is liable to be enlarged on bail.

According to the learned counsel for applicant, the marriage of deceased was solemnized with the son of applicant on 25.6.2021. The deceased was a short tempered lady and she took extreme step for terminating her life by consuming some poisonous substance on 21.6.2023 itself. The victim was rushed to the hospital, but she succumbed to the poisonous substance consumed by her on the way. On the above premise, he submits that the death of the deceased is a suicidal death. The Autopsy Surgeon, who conducted post mortem of the body of the deceased did not any external or internal ante mortem injury on the body of the deceased which

speaks of the bona fide of the applicant. The husband of the deceased i.e. son of the applicant is already languishing in jail. As per viscera report, a foreign chemical compound namely Aluminum Phosphide was found in the body parts of the deceased sent for chemical examination. Allegations made in the F.I.R. with regard to commission of physical and mental cruelty upon deceased for non fulfillment of demand of dowry are vague and bald allegations, inasmuch as same are devoid of material particulars. Applicant cannot be said to be the beneficiary of the alleged demand of dowry. Considering the nature of death of deceased the applicant is not liable to be awarded the maximum sentence under Section 304-B I.P.C.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 22.6.2023. As such, he has undergone, more than 4 months of incarceration. The police report i.e. charge sheet in terms of Section 173 (2) Cr. P. C. has already been submitted against applicant along with two others co-accused i.e. Gyanchandra and Satyendra Kumar (husband) and mother-in-law of the deceased on 15.8.2023. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he 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 named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The occurrence has taken place within 7 years of marriage at the marital home of the deceased. As such, the death of the deceased is a dowry death. In view of above, the burden is upon applicant to not only explain the manner of occurrence but also is his innocence in terms of Sections 106 and 113 B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. He, therefore, contends that no sympathy be shown by this Court in favour of applicant. 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, and upon perusal of record, evidence, accusations made, nature and gravity of offence, complicity of accused and coupled with the fact that the prima facie the death of the deceased is a

suicidal death, the bona fide of the applicant is explicit from the fact that no external ante mortem injury was found on the body of deceased, as per viscera report, a foreign chemical compound namely Aluminium Phosphide was found in the body parts of the deceased sent for chemical examination, applicant is the father-in-law of deceased, in view of the nature of death of deceased, applicant is not liable to be awarded maximum sentence under Section 304-B IPC, allegations made in the F.I.R. regarding demand of dowry and commission of physical and mental cruelty upon deceased are vague and bald allegations being devoid of material particulars, 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 the applicant stands crystallized, yet 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 trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

Accordingly, the bail application is **allowed**.

Let the applicant **Gyan Chandra** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..
- (iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, 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 him 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 his 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