

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 45240 of 2023

**Applicant :-** Vishal

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

**Counsel for Applicant :-** Mahendra Bahadur Singh, Shashank Singh

**Counsel for Opposite Party :-** G.A.

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

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

This application for bail has been filed by applicant Vishal seeking his enlargement on bail in Case Crime No.488 of 2022, under Sections 498-A, 304-B, 323, 506, 120-B IPC and Section 3/4 Dowry Prohibition Act, police station Baldeo, district Mathura, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 27.06.2022, a delayed first information report dated 20.11.2022 was lodged by first informant, namely, Shivraj (brother of the deceased) and was registered as Case Crime No.0488 of 2022, under Sections 498-A, 304-B, 323, 506, 120-B IPC and Section 3/4 Dowry Prohibition Act, police station Baldeo, district Mathura. In the aforesaid first information report, ten persons, namely, Vikas (Jeth); Vishal (husband); Raj Kumar @ Raja (father-in-law); Smt. Babita (mother-in-law); Satyendra (Jeth); Smt. Sonam (Jethani); Gudia (Nanad); Ganesh; Deep Chandra and Jawahar Singh have been nominated as named accused.

It is apposite to mention here that the aforementioned first information report was lodged subsequent to an order passed by the concerned Magistrate on an application under Section 156 (3) CrPC filed by the complainant-first informant.

The gravamen of the allegations made in the first information report is to the effect that the marriage of Rajni (sister of the first informant) was solemnized with applicant-Vishal on 10.07.2019 in accordance with Hindu rites and customs. At the time of marriage, sufficient amount of dowry, a motorcycle and goods were given. However, the in-laws' of the deceased were dissatisfied with the same and demand of additional dowry by way of rupees one lac, a gold ring and motorcycle was made. But, as demand of additional dowry was not fulfilled, physical and mental cruelty was committed

upon the daughter of first informant. Ultimately, the sister of the first informant was put to death by named accused on 27.06.2022.

However, it is necessary to mention here that the death of the deceased had occurred on 27.06.2022. The information regarding aforesaid occurrence at the concerned police station was given by Satyaveer Singh, brother of the deceased. On the above information, the inquest (Panchayatnama) of the deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), neither the nature nor the cause of death of the deceased could be categorized. Thereafter, the post-mortem of the body of the deceased was conducted. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased, cause of death of the deceased was asphyxia as a result of ante-mortem hanging. The autopsy surgeon found following ante-mortem injuries on the body of deceased-Rajni :

**"Ante-mortem Injuries :-**

- 1. An abrasion present 03 cm x 2 cm below Rt. elbow joint lateral aspect.**
- 2. Ligature mark length is 16 cm x 2 cm and is below Rt. ear lower lobe by 6 cm, below chin by 6 cm and below Lt. ear lobe by 4 cm."**

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. He examined the first informant and other witnesses and recorded their statements under Section 161 CrPC. Witnesses so examined have substantially supported the F.I.R. On the basis of above and other material collected by the Investigating Officer during course of investigation, he came to the conclusion that complicity of only three of the named accused, namely, Vishal (husband) applicant herein; Raj Kumar @ Raja (father-in-law) and Babita (mother-in-law) of the deceased is fully established in the crime in question. In view of above, Investigating Officer submitted police report under Section 173 (2) CrPC on 21.02.2023, whereby aforementioned named accused have been charge-sheeted under Sections 498-A, 304-B, 323, 506, 120-B IPC and Section 3/4 Dowry Prohibition Act, whereas the other named accused have been exculpated.

Learned counsel for the applicant submits that though applicant is the husband of the deceased, a named/charge-sheeted accused yet he is liable to be enlarged on bail. He further contends that father-in-law and mother-in-law of the deceased, who are parents of the present applicant, have already been charge-sheeted under the same sections but they have already been enlarged on bail by this Court. The details of the same are as follows : *co-accused Raj Kumar @ Raja has been enlarged on bail by this Court vide order dated*

*13.07.2023 passed in Criminal Misc. Bail Application No.27484 of 2023 (Raj Kumar @ Raja Vs. State of U.P.) and co-accused Babita has been enlarged on bail by this Court vide order dated 19.07.2023 passed in Criminal Misc. Bail Application No.28170 of 2023 (Babita Vs. State of U.P.).*

On the above premise, it is urged by the learned counsel for applicant that the case of present applicant and that of named/charge-sheeted but bailed out co-accused is similar and identical, inasmuch as, all have been charge-sheeted under the same sections. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforesaid named/charge-sheeted co-accused so as to deny him bail. On the basis of above, he contends that in view of above and for the facts and reasons recorded in the bail order of aforesaid co-accused, the applicant is also liable to be enlarged on bail on the ground of parity.

It is next contended that the deceased was a short tempered lady and she had taken the extreme step of terminating her life by committing suicide by hanging herself after expiry of approximately three years from the date of her marriage. The bona fide of the applicant is explicit from the fact that the autopsy surgeon, who conducted autopsy of the body of deceased, did not find any other external or internal ante-mortem injury on the body of the deceased except the ligature mark. As such, prima facie the death of the deceased is a suicidal death. With reference to the FIR, the learned counsel for applicant submits that the allegations made in the FIR with regard to demand of additional dowry and commission of physical cruelty upon the deceased on account of non-fulfillment of additional demand of dowry are vague and bald allegations, inasmuch as, the same are devoid of material particulars. No attempt has been made by the first informant to substantiate the same in his statement recorded under Section 161 CrPC. The said fact is not contradicted by the learned A.G.A. He, therefore, contends that in view of the law laid down by the Apex Court in **Kahkashan Kausar @ Sonam & others Vs. State of Bihar (2022) 6 SCC 599**, the said allegations are liable to be ignored by this Court at this stage. In view of the nature of death of deceased, the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in custody since 18.01.2023. As such, he has undergone more than nine months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such the entire evidence sought to be relied upon by the prosecution against the applicant stands

crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant. He, therefore, contends 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 vehemently opposed the prayer for bail. He submits that since applicant is the husband of the deceased, a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this Court. The deceased was a young lady. The occurrence has taken place in her marital home just after expiry of approximately three years from the date of her marriage. As such, the same is highly un-natural. The occurrence has taken place within seven years of marriage of the deceased and that too at her matrimonial home. As such, the death of the deceased is a dowry death. By reason of above, the burden is upon the applicant to not only explain the manner of occurrence but also his innocence as per Sections 106 and 113-B of the Evidence Act. However, upto this stage, the applicant has miserably failed to discharge the said burden. He, therefore, contends that no sympathy be shown by this Court in favour of applicant. However, he could not dislodge the factual and 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, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the death of the deceased is a suicidal death, similarly situate and circumstanced co-accused Raj Kumar @ Raja and Babita (father-in-law and mother-in-law of the deceased) have already been enlarged on bail, all the accused have been charge-sheeted under same sections, the learned A.G.A. could not point out any such distinguishing feature in the case of the present applicant to distinguish his case from aforementioned charge-sheeted but bailed out co-accused so as to deny bail to the applicant, the allegations made in the FIR with regard to alleged demand of additional dowry are vague and bald being devoid of material particulars therefore, in view of law laid down by Apex Court in **Kahkashan Kausar @ Sonam & others (supra)**, the same are prima facie liable to be ignored at this stage, the bona fide of the applicant is explicit from the fact that except for the ligature mark no other external or internal ante-mortem injury was found on the body of the deceased by the autopsy surgeon, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted as such the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized, yet in spite of above the learned A.G.A. could not point out any such incriminating

circumstance from the record necessitating the custodial arrest of applicant during the proceeding of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (SC) 373 (paragraph 5)**, the clean antecedents of the applicant and the period of incarceration undergone, 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, the applicant has made out a case for bail.

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

Let the applicant **Vishal**, 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.**

Rks.