

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45348 of 2023

Applicant :- Chotelal Sankhwar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashutosh Mishra, Krishna Kumar Shukla, Shailendra Kumar Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Shailendra Kumar Ojha, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I 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 applicant- **Chotelal Sankhwar**, seeking enlargement on bail during trial in connection with Case Crime No. 1179 of 2021, under Section 498-A, 304-B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Chakeri, District Kanpur Nagar.
4. The first information report of the present matter was lodged on 02.12.2021 by Shivam against the applicant and Vikas alleging therein that his sister Aarti was married to Chotelal Sankhwar the applicant in the year 2018. His brother-in-law and Vikas the *nandoi* of his sister used to demand additional dowry from her. His sister and the applicant were living since last one year at Chakeri Mod in a rented place. The accused persons were demanding T.V., fridge and a motorcycle from his sister to which she stated that her family members cannot arrange for so much dowry on which they used to torture her. On 15.09.2021 at about 10 p.m. the accused persons burnt his sister through gas in the rented house. She was treated in a hospital but they took her from the hospital without being given full treatment. His sister is still not healthy. A report be lodged.
5. Learned counsel for the applicant argued that although the applicant is the husband of the deceased but he has been falsely implicated in the present case. It is argued that the deceased sustained burn injuries and the cause of death was opined as septicemia due to antemortem burn injuries. It is argued that the deceased died on 25.10.2021 at 4.45 a.m. while being under treatment at Lucknow. Learned counsel has argued that trial in the present matter has started in which the first informant has been examined as P.W.-1 and as such there are no chances of the applicant tampering with evidence. It is argued that although the deceased was admitted in the hospital from 15.09.2021 to 25.10.2021 but no statement of the deceased was recorded by the Magistrate or by the doctor. It is argued that the prosecution is relying upon the statement of the deceased given under section 161 Cr.P.C. to the Investigating Officer while being in an injured

condition but the same is not reliable and the same is a manipulated document. It is argued that the deceased sustained burn injuries while cooking. It is further argued that co-accused Vikas the brother-in-law / *nandoi* of the deceased has been granted bail by a co-ordinate Bench of this Court vide order dated 20.12.2022 passed in Criminal Misc. Bail Application No. 42473 of 2022, the copy of the said order has been produced before the Court which is taken on record. The applicant has no criminal history as stated in para 25 and is in jail since 17.10.2021.

6. *Per contra*, learned A.G.A. vehemently opposed the prayer for bail and argued that the applicant is the husband of the deceased. The deceased sustained burn injuries in her matrimonial house after which she succumbed to the injuries. She while being in an injured condition gave her statement to the Investigating Officer in which she has alleged that her husband and *nandoi* were responsible for burning her. It is argued that although co-accused Vikas who is the *nandoi* of the applicant has been granted bail but the same will not be of any help to the applicant since the the applicant is the husband of the deceased and has more burden than anyone else in the family to take care of his wife. It is argued that as such the bail be rejected.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is the husband of the deceased. He was married to the deceased in the year 2018. The deceased received burn injuries in the house where she was living with the applicant. There are allegations against the applicant in the first information report. The statement of the deceased recorded during investigation while she was in an injured condition implicates the applicant and gives role to him. In so far as co-accused being granted bail is concerned, he is the brother-in-law / *nandoi* of the deceased. The deceased sustained burn injuries.

8. Looking to the nature of incident, statement of the deceased to the Investigating Officer, grievousness of the offence, this Court does not find it a fit case for bail, hence, the bail application is **rejected**.

Order Date :- 7.11.2023

AS Rathore

(Samit Gopal,J.)