

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45758 of 2023

Applicant :- Madan

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Mishra, Satya Dheer Singh Jadaun

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Ashish Mishra, learned counsel for the applicant, Sri Ajay Singh, learned AGA-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 Madan, seeking enlargement on bail during trial in connection with Case Crime No. 247 of 2023, under Sections 498A, 304B I.P.C. and 3/4 Dowry Prohibition Act, registered at P.S. Jhinjhana, District Shamli.
4. The F.I.R. of the matter was lodged on 26.6.2023 by Prempal against the applicant and 7 other persons alleging therein that his daughter Bhavna Sharma was married to Rohit Sharma son of the applicant, on 30.11.2019. He had spent around 25 lakhs in the marriage. The accused persons including the applicant were not satisfied with the gifts and dowry and were demanding Rs.10 lakhs as additional dowry. They used to assault and torture his daughter. On 19.6.2023 he counseled the accused persons but they did not mend their ways. On 23.6.2023 his daughter has been done to death by the accused persons and then ran away. He received information about death of his daughter through police.
5. Learned counsel for the applicant argued that the applicant is father-in-law of the deceased and he has been falsely implicated in the case because of the reason being family member of husband of the deceased. It is argued that the deceased Bhavna Sharma and her elder sister Pinki were married to two real brothers in the same house. Bhavna Sharma was married to Rohit Sharma whereas Pinki Sharma was married to Mohit Sharma elder son of the applicant who is also an accused in the

matter. It is argued that Pinki Sharma has been made an eye witness of the incident and she states that the accused persons murdered her sister by strangulating her but she was not an eye witness as even in the statement recorded under Section 161 Cr.P.C. she has assigned common and general role to all 08 accused persons including the applicant. It is argued that post mortem report of the deceased shows ligature marks on her body with fracture of trachea and hyoid bone but the doctor could not ascertain the cause of death and viscera was preserved for chemical analysis. Viscera report is still awaited. It is argued that in so far as cause of death of the deceased is concerned since trachea and hyoid bone were found fractured the same are conclusive of asphyxia as result of ante mortem injury. It is argued that Rohit Sharma the husband of the deceased is in jail. It is argued while placing para-20 of the affidavit, argued that the applicant is aged about 61 years and is suffering from several old age disease. It is further argued that the applicant was living separately at a different place from the deceased and her husband, para-18 and 22 of the affidavit have been placed to buttress the said arguments. It is argued that charge sheet in the matter has been submitted against the applicant- Madan Sharma, Rohit Sharma, Mithlesh Sharma and Mohit Sharma whereas the other four accused persons have been exonerated, para-17 of the affidavit has been placed for the same. It is argued that the applicant has no other criminal antecedents as stated in para-25 of the affidavit and is in jail since 3.8.2023.

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

7. After having heard learned counsels for the parties and perusing the record, it is evident that the applicant is father-in-law of the deceased. He is stated to have living separately from the deceased and her husband at a different place. The husband is in jail. The F.I.R. names 8 accused persons out of which 4 accused persons have been exonerated. The real sister of the deceased is married to another son of the applicant who is an eye witness of the incident but assigned general and omnibus role to all accused persons.

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 applicant may be enlarged on bail.

9. Let the applicant- Madan, 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 applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant 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 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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.

(V) 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 and the trial court may proceed against him 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 applicant.

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 applicant to prison.

11. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 30.10.2023/Naresh