

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45774 of 2023

Applicant :- Babalu Kapadiya

Opposite Party :- State of U.P.

Counsel for Applicant :- Dev Prakash Sharma, Pradeep Kumar Pandey, Priyanka Devi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mrs. Priyanka Devi Sharma, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Babalu Kapadiya, seeking his enlargement on bail in Case Crime No. 196 of 2023, under Sections 498-A, 304-B, 504 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kulpahad, District-Mahoba during the pendency of trial.

4. Record shows that marriage of Birendra (son of applicant) was solemnized with Sonam on 12.12.2020. However, just after expiry of a period of 2 years and 6 months from the date of marriage of the son of the applicant, an unfortunate incident occurred on 11.07.2023 in which, Sonam (daughter-in-law of the applicant) died as she committed suicide by hanging herself. The information regarding the aforesaid occurrence at the concerned Police Station was given by one Dharmjeet. On the aforesaid information, the inquest (*Panchayatnama*) of the body of deceased was conducted on 12.07.2023. In the opinion of the witnesses of inquest (*Panch witnesses*), the nature of the death of deceased was categorized as homicidal and the cause of death of deceased was said to be hanging. Thereafter, the post mortem of the body of deceased was conducted on 13.07.2023. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of the deceased was Asphyxia due to ante-mortem hanging. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"A ligature mark present around the size 28 cm x 1 cm ... gap of

7 cm mid part of above chin and..... "

5. After the proceedings of inquest and post mortem were undertaken, a delayed FIR dated 14.07.2023 came to be lodged by first informant-Malkhan (father of the deceased) and was registered as Case Crime No. 196 of 2023, under Sections 498-A, 304-B, 504 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kulpahad, District-Mahoba. In the aforesaid FIR, 4 persons namely (1) Virendra (Husband), (2) Babalu (Father-in-law i.e. applicant herein), (3) Smt. Aneeta (Mother-in-law) and (4) Radha (Nanad) of the deceased have been nominated as named accused.

6. After completion of statutory investigation of concerned Case Crime Number, Investigating Officer submitted the police report under Sections 173(2) Cr.P.C. i.e. charge sheet on 19.09.2023 whereby 3 of the named accused i.e. Virendra (Husband), Babalu Kapadiya (Father-in-law) and Smt. Aneeta (Mother-in-law) of the deceased have been charge sheeted under Sections 498-A, 304-B, 504 IPC and Sections 3/4 Dowry Prohibition Act whereas the named accused Radha (Nanad of the deceased) was exculpated.

7. Learned counsel for applicant contends that though the applicant is the father-in-law of deceased, a named and charge sheet accused yet he is liable to be enlarged on bail. With reference to the material on record, he submits that the deceased was a short tempered lady and she has taken the extreme step of terminating her life by hanging herself. The bona-fide of applicant is explicit from the fact that in the opinion of Autopsy Surgeon, who conducted autopsy of the body of the deceased, the cause of death of deceased is asphyxia as a result of ante mortem hanging. As such, prima facie, the death of deceased is a suicidal death. Moreover no other internal or external ante-mortem injury except the ligature mark was found on the body of the deceased by the autopsy surgeon. Applicant being the father-in-law of deceased cannot be said to be beneficiary of the alleged demand of dowry. No abetment, instigation or conspiracy can be inferred against applicant for committing the crime in question from the record either. Allegations made in the F.I.R. with regard to demand of additional dowry to the tune of Rs. 2 lacs, a motorcycle and gold chain and commission of physical and mental cruelty upon deceased on account of non-fulfilment of additional demand of dowry are false and concocted. They are vague and bald allegations inasmuch as, the same are devoid of material particulars. No attempt has been made by the first informant to explain the same either. As such, the same are liable to be ignored

by this Court at this stage in view of the law laid down by Apex Court in **Kahkashan Kausar @ Sonam and others Vs. State of Bihar and Others, (2022) 6SCC 599.**

8. It is then contended by the learned counsel for applicant that from the wedlock of applicant and the deceased, a child was born who is aged about 8 months. Considering the precarious condition of the applicant, the learned counsel for applicant contends that it is impossible to imagine that applicant shall cause the death of the deceased. It is thus urged that applicant is liable to be enlarged on bail.

9. Even otherwise applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 24.07.2023. As such he has undergone approximately 4 months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. (i.e. charge sheet) has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged by the learned counsel for applicant 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.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is the father-in-law of deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The deceased has committed suicide just after 2 years and 6 months from the date of her marriage on account of the act of named as well as charge sheeted accused. The death of the deceased is an unnatural death. Occurrence has taken place in the house of applicant and within seven years of the marriage of the deceased. Therefore, the death of the deceased is a dowry death. By reason of above and also the fact that applicant is the father-in-law of deceased and also an inmate of the house in which the occurrence occurred, therefore, the burden is upon the applicant to not only explain the manner of occurrence but also his innocence in terms of Sections 106 and 113B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. He, therefore, submits that applicant does not deserve any sympathy of this Court. 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.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made and complicity of accused coupled with the fact that prima-facie the death of deceased is a suicidal death, 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 deceased except the ligature mark, allegations made in the F.I.R. with regard to demand of additional dowry and commission of mental and physical cruelty upon the deceased on account of non-fulfillment of the same are prima-facie vague and bald allegations being devoid of material particulars, no attempt has been made by the first informant to explain the same in his statement under Section 161 Cr.P.C. either, as such, the same are liable to be ignored by this Court at this stage in view of the judgement of Supreme Court in **Kahkashan Kausar @ Sonam (Supra)**, no such circumstance has emerged on the record on the basis of which it can be concluded that the applicant has abetted, instigated or conspired in the commission of the crime or the deceased committed suicide on account of an immediate act of applicant, as the death of deceased is prima-facie a suicidal death, therefore, the applicant is not liable to be awarded the maximum sentence under Section 304-B I.P.C. in case, he is convicted, 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 relied upon by the prosecution against applicant stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from record necessitating the custodial arrest of applicant during the pendency of trial, the judgement of Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5)**, applicant cannot be said to be the beneficiary of the alleged demand of dowry, the husband of deceased i.e. the son of applicant is already in jail, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but without making comments on the merits of the case, applicant has made out a case for bail.

12. Accordingly, present application for bail is **allowed**.

13. Let the applicant-Babalu Kapadiya involved in aforesaid case crime number be released on bail on his 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) Applicant will not tamper with prosecution evidence.

(ii) 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) Applicant will not indulge in any unlawful activities.

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

14. 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 of applicant and send him to prison.

Order Date :- 22.11.2023

Vinay