

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46041 of 2023

Applicant :- Kamla Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Arvind Kumar Sahu, Praveen Kumar Srivastava, Vindeshwari Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Arvind Kumar Sahu, 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-Kamla Devi, seeking her enlargement on bail in Case Crime No. 297 of 2023, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kotwali, District-Budaun during the pendency of trial.
4. Record shows that marriage of Rajesh (son of applicant) was solemnized with Ruchi on 14.05.2021. However, just after expiry of a period of 2 years and 2 months from the date of marriage of the son of applicant, an unfortunate incident occurred on 19.07.2023 in which, Ruchi (daughter-in-law of the applicant) died as she committed suicide by hanging herself.
5. The information regarding the aforesaid occurrence at the concerned Police Station was not given by applicant or any other family member of applicant but by one Guddo Devi (mother of the deceased).
6. On the aforesaid information, the inquest (*Panchayatnama*) of the body of deceased was conducted on 20.07.2023. In the opinion of the witnesses of inquest (*Panch witnesses*), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was said to be hanging.
7. After the inquest proceedings of the deceased had been undertaken, an FIR dated 20.07.2023 came to be lodged by first informant-Guddo Devi (mother of the deceased) and was registered as Case Crime No. 297 of 2023, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kotwali, District-Budaun. In the aforesaid FIR, 6 persons

namely - (1) Rajesh, (2) Kamla Devi (applicant herein), (3) Rachna, (4) Ramautar, (5) Prem and (6) Pushpa have been nominated as named accused.

8. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The post mortem of the body of deceased was conducted on 20.07.2023. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was Asphyxia as a result of ante-mortem hanging. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. A ligature mark 30 x 2 cm around the neck, 2 cm below Rt. Ear, 5 cm below front of Chin, 3 cm below Lt. Ear & Gap of knot 5 cm present over Back of Nec.

2. On cut Section subcutaneous tissue underneath Ligature mark is white hard and glistering."

9. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of only 2 of the named accused i.e. Rajesh (Husband) and Kamla Devi (Mother-in-law i.e. applicant herein) of the deceased was found established in the crime in question. Accordingly, they were charge sheeted under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act vide charge sheet dated 27.08.2023 whereas rest of the named accused have been exculpated.

10. Learned counsel for applicant contends that though applicant is the mother-in-law of deceased, a named as well as charge sheeted accused yet she is liable to be enlarged on bail. It is then contended that since applicant is a lady, therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C. The deceased was a short tempered lady and she has taken an extreme step of terminating her life by hanging herself. The bona-fide of the applicant is further explicit from the fact that except for the ligature mark, no other external ante-mortem injury was found on the body of deceased by the Autopsy Surgeon. Attention of the Court was then invited to the FIR and on basis thereof, it is urged by the learned counsel for applicant that the allegations made in the FIR regarding demand of additional dowry to the tune of Rs. 2 lacs and a two wheeler are not only false but concocted. The said allegations are vague and bald allegations as

they are devoid of material particulars. Referring to the judgment of Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**, he, therefore, submits that since allegations with regard to demand of additional dowry and commission of physical and mental cruelty upon the deceased on account of non fulfillment of additional demand of dowry have not been substantiated by material particulars, therefore, the same are liable to be ignored by this Court at this stage. Moreover, applicant is the mother-in-law of the deceased, therefore, she cannot be said to be the beneficiary of the alleged demand of dowry. The son of the applicant i.e. Rajesh (husband of the deceased) is already under incarceration. Therefore, he submits that applicant is liable to be enlarged on bail.

11. Even otherwise, applicant is a woman of clean antecedents inasmuch as, she has no criminal history to her credit except the present one. Applicant is in jail since 04.08.2023. As such, she has undergone more than 3 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, 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 necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he submits 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.

12. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is the mother-in-law, a named as well as charge sheeted accused, therefore, she does not deserve any indulgence by this Court. The deceased was a young lady aged about 28 years who has died in unnatural circumstances. The death of the deceased has occurred just after 2 years and 2 months of her marriage. As the death of deceased has occurred within 7 years of her marriage, therefore, the same is a dowry death. Applicant is the mother-in-law of deceased and an inmate of the house where the occurrence occurred. As such, the burden is upon the applicant to not only explain the manner of occurrence but also her innocence in terms of Sections 106 and 113-B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden up to this stage. As such, no sympathy be shown by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

13. 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, complicity of accused and coupled with the fact that since applicant is a lady, therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., the bona-fide of the applicant is further explicit from the fact that except for the ligature mark, no other external ante-mortem injury was found on the body of deceased, the allegations made in the FIR regarding demand of additional dowry to the tune of Rs. 2 lacs and a two wheeler are not only false but concocted, the said allegations are vague and bald allegations as they are devoid of material particulars, since allegations with regard to the demand of additional dowry and commission of physical and mental cruelty upon the deceased on account of non fulfillment of additional demand of dowry have not been substantiated by the material particulars, therefore, the same are liable to be ignored by this Court at this stage, the judgment of Supreme Court in **Kahkashan Kausar @ Sonam (Supra)**, applicant is the mother-in-law of the deceased, therefore, she cannot be said to be the beneficiary of the alleged demand of dowry, 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 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, since prima-facie the death of deceased is a suicidal death, therefore the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case, she is convicted, 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.

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

15. Let the **applicant-Kamla Devi**, be released on bail in the aforesaid case crime number on her 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 SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER 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/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(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 THE HIM/HER 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.

16. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on her 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 :- 22.11.2023

Vinay