

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48518 of 2023

Applicant :- Devendra Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Anand Kumar Srivastava

Counsel for Opposite Party :- G.A.,Akhilesh Kumar Mishra

Hon'ble Rajeev Misra,J.

Heard Mr. Anand Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Devendra Tiwari seeking his enlargement on bail in Case Crime No. 80 of 2023, under Sections 304-B, 498-A IPC and Section 3/4 D.P. Act, Police Station- Khanpur, District Ghazipur during the pendency of trial.

Record shows that marriage of Ashutosh Tiwari, son of applicant was solemnized with Jyoti sister of first informant on 3.12.2017. However, after expiry of period of five years and six months from the date of marriage of son of applicant, an unfortunate incident occurred on 11.6.2023, in which the daughter in law of the applicant Jyoti died as she consumed some poisonous substance.

It is the case of applicant that information regarding aforesaid occurrence was given by the mother in law of deceased to the brother of deceased.

It is on the aforesaid information that the brother of the deceased/first informant came to the marital home of the deceased and thereafter took the victim to the hospital where she was declared brought dead.

On the information given by Vivek Tiwari, the brother of deceased first informant, Inquest (Panchayatnama) of the body of deceased was conducted. In the opinion of witness of inquest (panch witness), no opinion could be expressed with regard to the nature of death of deceased and cause of death of deceased. Thereafter,

post mortem of body of deceased was conducted. The Doctor who conducted autopsy of the body of deceased opined that cause of death of deceased cannot be ascertained, therefore, viscera was preserved. Autopsy surgeon, did not find any external ante-mortem injury on the body of deceased.

After aforementioned proceedings had been undertaken, a belated F.I.R. dated 13.6.2023 was lodged by first informant, which was registered as Case Crime No. 80 of 2023, under Sections 304-B, 498-A IPC and Section 3/4 D.P. Act, Police Station- Khanpur, District Ghazipur. In the aforesaid F.I.R. four persons namely, Ashutosh Tiwari, Devendra Tiwari, Bindu Devi and Piyush Tiwari, have been nominated as named accused.

Learned counsel for applicant contends that though the applicant is father-in-law of deceased, named and charge-sheeted accused, yet he is liable to be enlarged on bail. The deceased was a short tempered lady. She has taken the extreme step of terminating her life by consuming some poisonous substance. As per F.S.L. report dated 1.8.2023, organo, chloro insecticide was found in the body parts of the deceased sent for chemical examination. The bonafide of the applicant is explicit from the fact that no external ante-mortem injury was found on the body of deceased. Referring to the F.I.R., the learned counsel for applicant contends that the only allegation made in the F.I.R. is that additional demand of dowry was made, and since the same was not fulfilled, physical cruelty was committed upon deceased. However, the said allegations are not only false and concocted but also vague and bald as they are devoid of material particulars. Reference in this regard is made to the judgement of Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**. On the basis of above, it is urged by learned counsel for applicant that since allegations made in the F.I.R. regarding demand of dowry and commission of cruelty upon deceased on account of non fulfilment of additional demand of dowry are devoid of material particulars, therefore, the same are liable to be ignored by this Court, at this stage. Even otherwise, applicant cannot be said to be the beneficiary of alleged demand of dowry. Son of the applicant is already languishing in jail.

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 8.8.2023. As such, he has undergone more than three months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by

prosecution against applicants stands crystalized. However, upto this stage no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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. and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. The death of deceased has occurred at her marital home before expiry of a period of seven years from the date of marriage. As such, the death of deceased is a dowry death. Applicant is an inmate of the house and father-in-law of the deceased. As such, the burden is upon the applicant to not only explain the manner of occurrence under Section 106 but also his innocence under section 113 of the Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. As such, 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, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that applicant is the father in law of deceased, the husband of the deceased is already languishing in jail, bonafide of the applicant is explicit from the fact that no external ante-mortem injury was found on the body of deceased. Allegations made in the F.I.R. regarding demand of additional dowry, commission of cruelty upon deceased on account of non fulfilment of same are vague and bald allegations as same have not been substantiated by material particulars, **the same are liable to be ignored by this Court at this stage, the judgment of the Supreme Court in Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized, yet inspite 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, the period of incarceration undergone, the clean antecedents of

applicant, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail but without making any comment on the merits of the case, applicant has made out a case for bail.

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

Let the applicant- **Devendra Tiwari**, 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 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/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 :- 6.12.2023

Arshad