

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 46457 of 2023

**Applicant :-** Kaptan

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Sanjive Kumar Gupta

**Counsel for Opposite Party :-** G.A.,Nagendra Kumar Singh

**Hon'ble Rajeev Misra,J.**

1. Heard Mr. Sanjive Kumar Gupta, 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-**Kaptan** seeking his enlargement on bail in Case Crime No.272 of 2023, under Sections 498A, 304B I.P.C., and Section 3/4 D.P. Act, Police Station- Ushait, District- Budaun during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 29.07.2023, a delayed F.I.R. dated 01.08.2023 was lodged by first informant Krishan Pal (father of the deceased) and was registered as Case Crime No.272 of 2023, under Sections 498A, 304B I.P.C., and Section 3/4 D.P. Act, Police Station- Ushait, District- Budaun. In the aforesaid F.I.R. four persons namely, Santoshi Devi, Anegpal, Kaptan, and Anisha have been nominated as named accused.

5. It is apposite to mention here that husband of the deceased has not been named as an accused in the F.I.R. Learned counsel for applicant submits that applicant is the Devar of the deceased a named and charge sheeted accused, inasmuch as the charge sheet has been submitted on 07.09.2023 against three of the named accused, whereas, one of the named accused Anisha was exculpated by the Investigating Officer yet he is liable to be enlarged on bail. According to the learned counsel for applicant the deceased was a short tampered lady and she has taken the extreme step of terminating her life by committing suicide by hanging herself. The bona fide of the applicant is explicit from the fact that the autopsy surgeon who conducted autopsy of the body of the

deceased did not find any external ante-mortem injury on the body of the deceased except the ligature mark. The occurrence giving rise to the present criminal proceedings has occurred after expiry of 4 years and 8 months from the date of marriage. The nature of death of the deceased is prima facie suicidal death. In view of above, the applicant is not liable to be awarded the maximum sentence under Section 304B.

6. 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 06.09.2023. As such he has undergone more than one month 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, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the course of trial. He therefore 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.

7. Per contra, the learned A.G.A has opposed the prayer for bail. He submits that since the applicant is a named as well as charge sheeted accused therefore he does not deserve any indulgence by this Court. The husband of the deceased has not been named as accused in the F.I.R. nor the charge sheet has been submitted against him. As per the statement of the witnesses examined under Section 161 Cr.P.C., it is the charge sheeted accused who committed cruelty upon the deceased on account of non-fulfilment of the additional demand of dowry which is Rs. 50,000/- cash and buffalo. According to the learned A.G.A. the death of the deceased has occurred within 7 years from the date of her marriage and at her marital home. As such, the same is dowry death. Applicant is an inmate of the house. Therefore, by reason of above, accused-applicant is not only under burden to explain the manner of occurrence but also his innocence in terms of Sections 106 and 113B of the Evidence Act. However, applicant has miserably failed to discharge the said burden up to this stage. He therefore, contends that no sympathy be shown by this Court in favour of the 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.

8. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of applicant, gravity and nature of offence and accusation made

coupled with the fact that prima facie the death of the deceased is a suicidal death, the bona fide of the applicant is explicit from the fact that autopsy surgeon who conducted the autopsy of the body of the deceased did not find any external ante-mortem injury of the deceased except the ligature mark, the occurrence giving rise to the present criminal proceedings had occurred after expiry of 4 years and 8 months from the date of marriage, prima facie the allegations made in the F.I.R., with reference to the demand of additional dowry and commission of physical and mental cruelty upon the deceased on account of non-fulfilment of the same are not worthy of reliance, inasmuch as the same have not been substantiated by material particulars, the statement of the first informant recorded under Section 161 Cr.P.C. also does not fully explain the manner of demand of alleged demand of dowry or commission of cruelty upon the deceased, inspite of the fact that the charge sheet has been submitted, and therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the course of trial, the clean antecedents of the applicant, the period of incarceration undergone, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5)**, therefore, irrespective of the objections raised by the learned A.G.A. 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.

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

10. Let the applicant- **Kaptan**, be released on bail in aforesaid case crime number 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) 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.

11. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his 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 :- 2.11.2023**

Imtiyaz