

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46588 of 2023

Applicant :- Asha

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Pati Tiwari, Arun Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Rakesh Pati Tiwari, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Asha seeking her enlargement on bail in Case Crime No.287 of 2023, under Sections 304-B, 498-A, 323, 504, 506 IPC and Section 3/4 Dowry Prohibition Act, police station Junawai, district Sambhal, during the pendency of trial.

Perused the record.

Record shows that marriage of Rohit @ Akash (brother of the applicant) was solemnized with Preeti (daughter of first informant) on 04.03.2022 in accordance with Hindu rites and customs. However, just after expiry of a period of one year and five months from the date of marriage of the brother of the applicant, an unfortunate incident occurred on 10.08.2023 in which the Bhabhi of the applicant (deceased) died on account of Septic shock.

It is apposite to mention here that it is the case of the applicant that immediately after the occurrence, the victim was rushed to the hospital, namely, Virmani Hospital, Sambhal. Unfortunately, the victim succumbed to the injuries sustained by her on 10.08.2023 itself while undergoing treatment. The information regarding death of the deceased at the concerned police station was given by the father of the deceased Rishipal/first informant.

Thereafter, the inquest (Panchayatnama) of the deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was categorized as homicidal and the cause of death of the deceased was said to be ailment which the deceased suffered on account of torture committed by her in-laws. Subsequent to above, the post-mortem of the body of deceased was conducted. The Doctor, who conducted autopsy of the body of deceased, opined that the cause of death of deceased is Septic shock. However, the autopsy surgeon did not find any

external ante-mortem injury on the body of the deceased. Accordingly, the viscera of the deceased was preserved. Learned A.G.A. contends that the viscera report of the deceased has not yet been received.

At the very outset, the learned counsel for applicant contends that though applicant is a named accused yet she is liable to be enlarged on bail. The investigation is still going on and, therefore, the charge-sheet has not yet been submitted. The father-in-law of the deceased, namely, Khadag Singh (father of the present applicant) has already been enlarged on bail by this Court vide order dated 03.11.2023 passed in Criminal Misc. Bail Application No.47023 of 2023 (Khadag Singh Vs. State of U.P.). For ready reference, the order dated 03.11.2023 is reproduced herein-under :-

"By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No.287 of 2023 at Police Station-Junawai, District-Sambhal under Sections 304B, 498A, 323, 504, 506 IPC and Section 3/4 of the Dowry Prohibition Act. The applicant is in jail since 16.09.2023.

The bail application of the applicant was rejected by the learned trial court on 13.10.2023.

The following arguments made by Shri Suresh Dhar Dwivedi, learned counsel holding brief of Shri Rakesh Pati Tiwari, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

- 1.The applicant is the father-in-law of the deceased.
2. The applicant did not harass the deceased or demand dowry. He never interfered in the marital life of the deceased and her husband.
3. The deceased was suffering from chronic ailments. She was provided the best medical treatment by the applicant's family but to no avail.
4. The cause of death as recorded in the post mortem report is "septic shock".
5. No ante mortam injuries was found on the body of the deceased.
6. The deceased died due to ailments which got complicated.
7. The applicant did not aid or abet the suicide.
8. The prerequisites for attracting the presumption and the reversing the burden of proof are not established in the facts and circumstances and evidence of the case.
9. The applicant does not have any criminal history apart from this case.
10. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations

on the merits of the case, the bail application is allowed.

Let the applicant-Khadag Singh 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 below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted."

With reference to the medical report of the prosecutrix, the learned counsel for applicant submits that the deceased has died on account of ailment suffered by her and not on account of any deliberate act of the applicant. As such, the case of the present applicant is similar and identical to that of named accused Khadag Singh who has already been enlarged on bail. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from named co-accused Khadag Singh so as to deny bail to the applicant. He therefore submits that in view of above and for the facts and reasons recorded in the bail order of named but bailed out co-accused Khadag Singh, the applicant is also liable to be enlarged on bail on ground of parity. The applicant is a lady and therefore she is entitled to the benefit of the provisions contained in proviso to Section 437 CrPC. The bona fide of the applicant is further explicit from the fact that the autopsy surgeon, who conducted autopsy of body of the deceased, did not find any external ante-mortem injury on the body of the deceased. Applicant is the married Nanad of the deceased. She cannot be said to be the beneficiary of the alleged demand of dowry. Moreover, the allegation made in the FIR regarding demand of additional dowry is false and concocted. The same are vague and bald allegations as they are devoid of material particulars. No attempt has been made by the first informant to explain/establish the same in his statement recorded under Section 161 CrPC. As such, applicant is liable to be enlarged on bail.

Even otherwise, applicant is a woman of clean antecedents having no criminal history to her credit except the present one. Applicant is in custody since 16.09.2023. As such, she has undergone more than two months of incarceration. However, the learned A.G.A. could not point out from the record any incriminating circumstance necessitating the custodial arrest of applicant. In view of the nature of death of deceased, applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case the applicant is convicted. He, therefore, contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a named accused therefore, she does not deserve any indulgence by 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.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that similarly situate and circumstanced named co-accused Khadag Singh has already been enlarged on bail, the learned A.G.A. could not point out any such distinguishing feature on the basis of which the case of present applicant could be so distinguished from the aforementioned named but bailed out co-accused so as to deny bail to her, applicant is the married Nanad of deceased, prima facie she cannot be said to be the beneficiary of the alleged demand of dowry, the allegations made in the FIR regarding demand of additional dowry are vague and bald allegations being devoid of material particulars, the applicant being a lady is entitled to the benefit of the provisions contained in proviso to Section 437 CrPC, the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the proceedings of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (SC) 373 (paragraph 5)**, the clean antecedents of the applicant, the period of incarceration undergone, 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, the applicant has made out a case for bail.

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

Let the applicant **Asha**, involved in aforesaid case crime number, be released on bail on her furnishing a personal bond with 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 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 her counsel. In

case of her absence, without sufficient cause, the trial court may proceed against her under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure 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 her, in accordance with law, under section 174-A I.P.C.

(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 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 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.

Rks.