

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46406 of 2023

Applicant :- Santosh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Sunil Kumar Yadav, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Santosh Kumar seeking his enlargement on bail in Case Crime No.58 of 2023, under Sections 323, 504, 498-A 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Pilua, district Etah, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 22.01.2023, a delayed first information report dated 30.03.2023 came to be registered subsequent to an order passed by the concerned Magistrate on an application under Section 156 (3) CrPC filed by first informant, namely, Smt. Urveash Kumari (mother of the deceased). The said FIR was registered as Case Crime No.058 of 2023, under Sections 323, 504, 498-A 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Pilua, district Etah. In the aforesaid FIR, four persons, namely, Santosh Kumar-applicant herein (husband); Smt. Prema Devi (mother-in-law); Ram Sanahi (father-in-law) and Gudia (Nanad) of the deceased have been nominated as named accused, whereas two unknown persons have also been arraigned as accused.

Learned counsel for the applicant submits that the marriage of applicant was solemnized with Karishma @ Lado (daughter of the first informant) on 19.07.2018. However, just after expiry of a period of approximately four years and eleven months from the date of marriage of the applicant, an unfortunate incident occurred on 22.01.2023 in which the wife of the applicant, namely, Karishma @ Lado died as she committed suicide by hanging herself.

Learned counsel for the applicant submits that though applicant is the husband of the deceased, a named/charge-sheeted accused yet, he is liable to be enlarged on bail. The

deceased was a short tempered lady and she took an extreme step of terminating her life by committing suicide. 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 other external or internal ante-mortem injury on the body of the deceased except the ligature mark. With reference to the FIR, the learned counsel for applicant submits that the allegations made in the FIR with regard to demand of dowry and commission of cruelty upon the deceased on account of non-fulfillment of demand of dowry are vague and bald allegations, inasmuch as, the same are devoid of material particulars as the amount of dowry alleged to have been demanded by the named accused has not been specified in the first information report. Attention of the Court was then invited to the statement of the first informant, which is at page 37 of the paper book. With reference to above, the learned counsel for applicant submits that the first informant in her statement under Section 161 CrPC for the first time specified that the demand of a four wheeler and rupees fifty thousand cash was raised towards additional dowry. However, the material particulars with regard to the manner in which the alleged demand of dowry was made and the cruelty as alleged was committed is conspicuous by its absence. He, therefore, contends that in view of the law laid down by the Apex Court in **Kahkashan Kausar @ Sonam & others Vs. State of Bihar (2022) 6 SCC 599**, the said allegations are liable to be ignored by this Court at this stage. Considering the nature of death of deceased, applicant is not liable to be awarded the maximum sentence under Section 304-B IPC.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in custody since 14.08.2023. As such, he has undergone more than two and half months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant. He, therefore, contends 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. has vehemently opposed the prayer for bail. He submits that since applicant is the husband of the deceased a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this Court. The deceased was a young lady aged about 24 years whose death has occurred in unnatural circumstance. The occurrence has taken place within seven years of marriage of the deceased and that too in her marital home. As such, the

death of the deceased is a dowry death. Since the applicant is the husband of the deceased and an inmate of the house 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 113-B of the Evidence Act. However, upto this stage, the applicant has miserably failed to discharge the said burden. He, therefore, contends that 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, nature and gravity of offence, evidence, complicity of the accused, accusation made and 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 except for the ligature mark no other external or internal ante-mortem injury was found on the body of the deceased by the autopsy surgeon, considering the nature of death of the deceased the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC, the allegations made in the FIR with regard to alleged demand of dowry and commission of cruelty upon the deceased in pursuit of the same are vague and bald allegations being devoid of material particulars, the first informant in her statement under Section 161 CrPC for the first time has specified the demand of additional dowry of a four wheeler and rupees fifty thousand cash, however the aforesaid omission that has occurred in the FIR remains un-explained, up this stage even the first informant has not detailed the manner in which the alleged demand of dowry was made nor the manner in which the alleged cruelty was committed upon the deceased, therefore, in view of law laid down by Apex Court in **Kahkashan Kausar @ Sonam & others (supra)**, the aforesaid allegations are prima facie liable to be ignored by this Court at this stage, the occurrence has occurred after expiry of our years and eleven months from the date of marriage of the deceased, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted as such the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized, yet in spite of above the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the proceeding 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 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 **Santosh Kumar**, involved in aforesaid case crime number, be released on bail on his 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 he 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, 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 him 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 :- 2.11.2023.

Rks.