

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46616 of 2023

Applicant :- Rajkumar Urf Ramkumar Urf Jitendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Laloo Yadav, Kiran Rani

Counsel for Opposite Party :- G.A., Chandra Prakash Singh

Hon'ble Rajeev Misra, J.

Heard Mr. Laloo Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mr. Chandra Prakash Singh, the learned counsel representing first informant.

This application for bail has been filed by applicant Rajkumar Urf Ramkumar Urf Jitendra seeking his enlargement on bail in Case Crime No.0251 of 2023, under Sections 498-A, 323, 304 IPC and Section 3/4 Dowry Prohibition Act, police station Nautanwa, district Mahrajganj, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 26.06.2023, a delayed FIR dated 18.08.2023 was lodged by first informant namely, Ram Prasad (father of the deceased) and was registered as Case Crime No.0251 of 2023, under Sections 498-A, 323, 304 IPC and Section 3/4 Dowry Prohibition Act, police station Nautanwa, district Mahrajganj. In the aforesaid FIR, four persons, namely, Rajkumar Urf Ramkumar Urf Jitendra-applicant herein (husband); Fagu (father-in-law); Suman alias Neelam (Nanad) and Kanchan (Nanad) of the deceased have been nominated as named accused.

At the very outset, the learned A.G.A. contends that investigation is still going on and therefore, no charge-sheet has been submitted by the Investigating Officer.

Learned counsel for applicant contends that though the applicant is the husband of the deceased, a named accused, yet he is liable to be enlarged on bail. He further contends that there is delay in lodging the FIR as the same has been lodged after expiry of about one month and three weeks from the date of occurrence. However, neither in the FIR nor in the statement of the first informant recorded under Section 161 CrPC there is any explanation regarding the delay in lodging the FIR. The family members of the deceased were present at the time of performance of last rites of the deceased. However, no objection was raised by them at that juncture.

Therefore, the present FIR has been engineered maliciously and is an afterthought.

Learned counsel for applicant next invited attention of the Court to the statement of the daughter of the applicant, namely, Renuka Chaudhary @ Riya, aged about six years. The said statement is on record at page 33 of the paper book. The aforesaid witness in her statement has categorically stated that a scuffle had taken place in between her father and mother and the father pushed her mother on account of which she fell down. Learned counsel for applicant has then referred to the post-mortem report of the deceased. From a perusal of same it is apparent that the deceased has sustained injuries on her face and upper chest.

According to the learned counsel for applicant since the occurrence has occurred on account of grave and sudden provocation and not on account of any calculated mens-rea or pre-planned act of the applicant therefore, the present case is a case of grave and sudden provocation and is covered under the fourth exception to Section 300 IPC. As such, the offence complained of would not travel beyond Section 304 Part II IPC. The offence complained of thus shall be culpable homicide not amounting to murder. He thus urged that considering the fact that no weapon of assault was used in the commission of crime, the offence complained of shall not travel beyond Section 304 Part II IPC.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 29.09.2023. As such, he has undergone more than one and half months of incarceration. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency 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.

Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since the applicant is named accused therefore he does not deserve any indulgence by this Court. The death of the deceased has occurred on account of a deliberate act of the applicant therefore no sympathy be shown by this Court in favour of applicant. However, they 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, the learned counsel representing first

informant, 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 as per the statement of Renuka Chaudhary @ Riya (daughter of the applicant and the deceased), a scuffle had taken place between the applicant and the deceased, and the applicant pushed his wife on account of which she died therefore, in the present case the occurrence has occurred at the spur of moment on account of grave and sudden provocation, thus the same is not the outcome of any calculated mens-rea or pre-planned act of the applicant, in view of above the case in hand is covered under the fourth exception to Section 300 IPC, as such the case in hand relates to culpable homicide not amounting to murder, as no weapon of assault was used in the crime in question therefore offence complained of shall not travel beyond Section 304 Part II IPC, the unexplained delay in lodging the FIR, the clean antecedents of applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant 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 **Rajkumar Urf Ramkumar Urf Jitendra**, 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 :- 22.11.2023.

Rks.