

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46714 of 2023

Applicant :- Shivani

Opposite Party :- State of U.P.

Counsel for Applicant :- Jitendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Jitendra Singh, the learned counsel for applicant and the learned A.G.A. for State.
2. Perused the record.
3. This bail application has been filed by the applicant Sonkali @ Maya seeking her enlargement on bail in Case Crime No. 0144 of 2023, under Sections 498A, 304-B IPC and Section 3/4 D.P. Act, P.S. Madnapur, District Shahjahanpur, during the pendency of trial.
4. Record shows that in respect of an incident, which is alleged to have occurred on 31.3.2023, a prompt F.I.R. dated 31.3.2023 was lodged by first informant Murari Lal and was registered as Case Crime No. 0144 of 2023, under Sections 498A, 304-B IPC and Section 3/4 D.P. Act, P.S. Madnapur, District Shahjahanpur.. In the aforesaid F.I.R., four persons namely Anand (husband), Maya (mother-in-law), Shivani (nand) and Baleshwar (father-in-law) of the deceased of the deceased have been nominated as named accused.
5. At the very outset, the learned counsel for applicant contends that named co-accused Sonkali @ Maya mother-in-law of

deceased has already been enlarged on bail by this Court vide order dated 18.10.2023 passed in Criminal Misc. Bail Application No. 36206 of 2023 (Sonkali @ Maya Vs. State of U.P.). For ready reference, the order dated 18.10.2023 is reproduced herein-under:

"Heard Ram Lakhan Kashyap, the learned counsel for the applicant, the learned A.G.A. for State and Mr. Atul Kumar Singh, the learned counsel representing first informant.

This bail application has been filed by the applicant Sonkali @ Maya seeking her enlargement on bail in Case Crime No. 0144 of 2023, under Sections 498A, 304-B IPC and Section 3/4 D.P. Act, P.S. Madnapur, District Shahjahanpur, during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 31.3.2023, a prompt F.I.R. dated 31.3.2023 was lodged by first informant Murari Lal and was registered as Case Crime No. 0144 of 2023, under Sections 498A, 304-B IPC and Section 3/4 D.P. Act, P.S. Madnapur, District Shahjahanpur.. In the aforesaid F.I.R., four persons namely Anand (husband), Maya (mother-in-law), Shivani (nand) and Baleshwar (father-in-law) have been nominated as named accused.

Learned counsel for the applicant submits that applicant is the mother-in-law of the deceased. Marriage of the parties was solemnized on 5.7.2017, whereas the occurrence giving rise to the present criminal proceedings occurred on 31.3.2023 i.e. after more than 5 years and 8 months of marriage. The deceased was a short tempered lady and she has taken the extreme step of terminating her life by committing suicide by hanging herself. Bona fide of the applicant is explicit from the fact that except for the ligature mark, no other ante mortem injury was found on the body of the deceased. Even otherwise, applicant is the mother-in-law of the deceased, therefore, the applicant being a lady is entitled to the benefit of the provisions contained in proviso to Section 437 Cr. P. C. The father-in-law of the deceased i.e. husband of applicant has already died. Son of the applicant is also languishing in jail. Applicant cannot be said to be beneficiary of the alleged demand of dowry. Even otherwise, applicant is a woman of clean antecedents, inasmuch as she has no criminal history to her credit except the present one. Applicant is in jail since 04.04.2023. As such, she has undergone more than 6 months of incarceration. The police report in terms of Section 173 (2) Cr. P. C. has already been submitted. Therefore, 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 pendency of trial. As such the applicant is liable to be enlarged on bail. Moreover, in case, applicant is not enlarged on bail, a happy family shall stand broken. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

In case, 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. and the learned counsel representing first informant have opposed the prayer for bail. However, they could not dislodge the factual/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 the applicant is mother-in-law of the deceased, applicant being a lady is entitled to the benefit of the provisions contained in proviso to Section 437 Cr. P. C. marriage of the parties was solemnized on 5.7.2017, whereas the occurrence giving rise to the present criminal proceedings occurred on 31.3.2023 i.e. after more than 5 years and 8 months of marriage. The deceased was a short tempered lady and she has taken the extreme step of terminating her life by committing suicide, bona fide of the applicant is explicit from the fact that except for the ligature mark, no other ante mortem injury was found on the body of the deceased, even otherwise, applicant is the mother-in-law of the deceased, therefore, prima facie she cannot be said to be the beneficiary or the alleged demand of dowry, the husband of the deceased i.e. son of applicant is already languishing in jail, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173 (2) Cr. P. C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, however, in spite 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, therefore, irrespective of the objections raised by the the learned A.G.A. for state and the learned counsel representing first informant in opposition to the present application for bail, but without commenting on the merits of the case, the applicant has made out a case for bail.

Accordingly, bail application is allowed.

Let the applicant Sonkali @ Maya, be released on bail in the aforesaid case crime number on her 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 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 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 :- 18.10.2023 "

6. On the above premise, the learned counsel for applicant contends that the case of present applicant is on better footing than that of bailed out co-accused **Sonkali @ Maya** He also contends that there is no such distinguishing feature on the basis of which case of present applicant can be so distinguished from the aforesaid bailed out co-accused so as to deny her bail. On the above premise, the learned counsel for applicant contends that in view of above and for the facts and reasons recorded in the order dated 18.10.2023 of co-accused **Sonkali @ Maya** applicant is also liable to be enlarged on bail on the ground of parity. It is then contended that since applicant is lady therefore, she is entitled to the benefit of the provisions contained in proviso to section 437 Cr.p.C

7. Even otherwise, applicant is a woman of clean antecedents inasmuch as she has no criminal history to her credit except the present one. Applicant is in custody since 27.09.2023. As such, she

has undergone more than one month of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. However, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. 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.

8. Per contra, the learned A.G.A. has opposed the prayer for bail. However, he could not dislodge the factual and legal submissions urged by learned counsel for applicant with reference to record at this stage.

9. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that similarly situate and circumstanced co-accused Sonkali @ Maya has already been enlarged on bail by this Court, the learned A.G.A. could not distinguish the case of present applicant from that of bailed out co-accused so as to deny her bail, no such circumstance could be pointed out by learned the A.G.A. distinguishing the case of present applicant so as to deny her bail, the applicant being a lady therefore she is entitled to the benefit of the provisions contained in proviso to section 437 Cr.P.C. the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173 (2) Cr.P.C. has already been submitted therefore the entire evidence sought to be relied upon by the prosecution against applicant stand crystallised, in spite of above,

the learned AG.A. could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

10. Accordingly, present application for bail is **allowed**.

11. Let the applicant-**Shivani** involved in aforesaid case crime number be released on bail on her 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) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

12. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send her to prison

Order Date :- 2.11.2023
YK