

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 47785 of 2023

**Applicant :-** Anand Pal

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

**Counsel for Applicant :-** Alok Tiwari

**Counsel for Opposite Party :-** G.A.

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

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

This application for bail has been filed by applicant Anand Pal seeking his enlargement on bail in Case Crime No. 254 of 2022, under Sections 498A, 304B IPC and Sections 3/4 Dowry Prohibition Act, P.S. Diyuriya Kalan, District Pilibhit, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident, which is alleged to have occurred on 28.8.2022, a delayed F.I.R. dated 29.8.2022 was lodged by first informant Dhaniram (father of the deceased) and was registered as Case Crime No. 254 of 2022, under Sections 498A, 304B IPC and Sections 3/4 Dowry Prohibition Act, P.S. Diyuriya Kalan, District Pilibhit. In the aforesaid F.I.R., three persons namely Anand (husband), Devendra (father-in-law) and Smt. Sushila (mother-in-law) of the deceased have been nominated as named accused.

Learned counsel for applicant contends that though applicant is the husband of the deceased a named as well as charge sheeted accused, inasmuch as charge sheet has been submitted on 15.9.2022 against all the three named accused, yet he is liable to be enlarged on bail. The marriage of applicant was solemnized with the deceased on 7.5.2020. From the aforesaid wedlock, two children were born. However, just after expiry of a period of 2 years and 3 months from the date of marriage of applicant with the deceased, an unfortunate incident occurred on 28.8.2022, in which the wife of applicant died as she committed suicide by hanging herself. The deceased was a short tempered lady inasmuch as she has taken the extreme step of terminating her life by committing suicide. The bona fide of the applicant is also explicit from the fact that the Autopsy Surgeon, who

conducted autopsy of the body of the deceased, did not find any other external ante mortem injury on the body of deceased except the ligature mark. He, therefore, submits that prima facie the death of deceased is a suicidal death. As such, applicant is not liable to be awarded the maximum sentence under Section 304B IPC. Attention of the Court was then invited to the F.I.R. He submits that allegations made in the F.I.R. with regard to commission of cruelty upon deceased on account of non fulfillment of demand of additional dowry (Spelendor Motorcycle) has been levelled in the F.I.R. However, the said allegations are false vague and bald allegations, inasmuch as the same are devoid of material particulars. As such, same are liable to ignored by this Court. In support of above, reliance is placed upon the judgement of the Supreme Court in **Kahkashan Kausar Vs. State of Bihar, (2022) 6 SCC 599**. It is then contended by the learned counsel for applicant that first informant has deposed before Court below as P.W. 1, but he has been declared hostile.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 17.5.2023. As such, he has undergone more than 2 months 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 the applicant stands crystallized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 opposed the prayer for bail. He submits that since applicant is the husband of the deceased a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The death of the deceased has occurred within seven years of her marriage and at her marital home. As such, the death of the deceased is a dowry death. Applicant is an inmate of the house and also the husband of the deceased. Therefore, burden is upon the applicant to not only explain the manner of occurrence but also his innocence in terms of Sections 106 and 113 of the Evidence Act. However, applicant has failed to discharge the said burden. As such, no sympathy be shown by this Court in favour of applicant, However, he 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, 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 no external or internal ante mortem injury was found on the body of deceased except the ligature mark, in view of above, the applicant is not liable to be awarded the maximum sentence for the offence under Section 304 B IPC, if convicted, allegations made in the F.I.R. regarding demand of additional dowry (Splendor motorcycle) are vague and false allegations inasmuch as the same are devoid of material particulars, as such, the same are liable to be ignored by this Court at this stage, the judgement of the Supreme Court in **Kahkashan Kausar Vs. State of Bihar, (supra)**, the absence of external or internal ante mortem injury on the body of the deceased except the ligature mark, 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 the applicant stands crystallized, however, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial, the clean antecedents of applicant, the period of incarceration undergone by applicant, therefore, irrespective of objections raised by the learned A.G.A. in opposition to this application for bail, but without making any comments on the merits of the case, the applicant has made out a case for bail.

Accordingly, bail application is **allowed**.

Let the applicant **Anand Pal** 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 :- 8.11.2023**

HSM