

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47795 of 2023

Applicant :- Durbesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Kunwar Bhadur Dixit, Anurag Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Anurag Shukla, the learned counsel for applicant and the learned A.G.A.
2. Perused the record.
3. At the very outset, the learned counsel for applicant contends that he be permitted to correct the prayer clause of present bail application as due to inadvertence in the prayer clause, criminal revision has wrongly been transcribed, in place of bail application
4. Prayer made by learned counsel for applicant is bonafide. Same is accordingly allowed.
5. Let necessary corrections be incorporated in the prayer clause of present application for bail, by learned counsel for applicant during course of the day.
6. This application for bail has been filed by applicant-Durbesh Kumar seeking his enlargement on bail in Case Crime No. 185 of 2020 under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act, Police Station-Barnahal, District- Mainpuri, during the pendency of trial.
7. Record shows that Marriage of applicant Durbesh Kumar was

solemnized with Rama Devi on 24.05.2015. From the aforesaid wedlock, a daughter was born. However, after expiry of a period of five years and four months from the date of marriage of the applicant, an unfortunate incident occurred on 13.10.2020 in which the wife of applicant namely Rame Devi died as she committed suicide by hanging herself.

8. Subsequently, the father of deceased lodged a prompt F.I.R. dated 13.10.2020, which was registered as Case Crime No. 185 of 2020 under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act, Police Station-Barnahal, District- Mainpuri. In the aforesaid F.I.R. four persons namely Durbesh Kumar (applicant herein), Pappu, Ravi and wife of Aadiram have been nominated as named accused whereas all other family members of the applicant have also been arraigned as accused..

9. The gravamen of the allegations made in the F.I.R. is to the effect that marriage of daughter of first informant, namely Rama Devi was solemnized five years ago with applicant Durbesh Kumar. At the time of marriage sufficient amount of goods and dowry were given. However, subsequently, additional demand of dowry was made. As the said additional demand of dowry was not fulfilled, physical and mental cruelty was committed upon the daughter of first informant. Ultimately, the daughter of first informant was put to death.

10. After aforementioned F.I.R. was lodged, the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Thereafter, inquest (Panchnama) of the body of 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 deceased was said to be deliberate act of assault

committed by the in-laws of the deceased.. Subsequent to above, post-mortem of the body of the deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased is asphyxia as a result of ante mortem hanging, The Autopsy Surgeon found following ante mortem injuries on the body of the deceased:

1. Ligature mark size 31 x 3 cm around the neck with a gap of 6 cm at the left side back of neck, ligature mark like 5 cm below right ear, 5 cm below chin, 3 cm below left ear. On cut section skin parchment like and glistening.

ii. Contusion over back of size 6 x 4 cm.

iii. Multiple abrasion over back of left thigh.

iv. Multiple abrasion over mid chest.

11. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C.. Witnesses so examined have substantially supported the F.I.R. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of applicant is fully established in the crime in question. He accordingly submitted the charge-sheet dated 22.11.2020 whereby applicant alone has been charged sheeted under Sections 498A, 304B I.P.C. and Sections 3/4 D. P. Act, whereas other named accused have been exculpated.

12. Learned counsel for applicant submits that though the applicant is husband of the deceased, a named as well as charge sheeted accused yet he is liable to be enlarged on bail. With reference to the material on record, he submits that the deceased was a short tempered lady and she has taken the extreme step of terminating her life by hanging herself. Bonafide of applicant is also explicit from the fact that in the opinion of Autopsy Surgeon,

the cause of death of deceased is asphyxia as a result of ante mortem hanging. As such, prima facie, the death of deceased is a suicidal death. Moreover no internal or external ante-mortem injury was found on the body of the deceased by the autopsy surgeon. No abetment, instigation or conspiracy can be inferred against applicant from the record either. Allegations made in the F.I.R. with regard to demand of additional dowry and commission of physical and mental cruelty upon deceased on account of non-fulfilment of additional demand of dowry are vague and bald allegation as they are devoid of material particulars. As such, the same are liable to be ignored by this Court at this stage in view of the law laid down by Apex Court in **Kahkashan Kausar @ Sonam and others Vs. State of Bihar and Others, (2022) 6SCC 599**.

13. Learned counsel for applicants further contends that considering the nature of death of deceased, applicant is not liable to be awarded the maximum sentence for an offence under Section 304B I.P.C. Attention of the Court was then invited to the statement of the first informant recorded under Section 161 Cr.P.C which is on record at page 38 of the paper book. With reference to above, he submits that the first informant in his aforesaid statement has not established or explained the allegation made in the F.I.R with regard to demand of additional dowry and commission of cruelty upon deceased with better particular and details. He therefore contends that since the allegations made in the F.I.R. regarding demand of additional dowry and the commission of physical and mental cruelty upon the deceased on account of non-fulfilment of the same have not been substantiated with material particulars therefore the same are liable to be ignored by this Court at this stage.

14. Even otherwise applicant is a man of clean antecedents inasmuch he has no criminal history to his credit except the present one. Applicant is in custody since 04.11.2020. As such, he has under-gone more than two years and a half 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. Upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicants 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, he shall not misuse the liberty of bail and shall co-operate with the trial.

15. Per contra, the learned A.G.A. for State has 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. According to the learned A.G.A., the death of deceased has occurred within seven years from the date of her marriage with applicant. The death of deceased is thus a dowry death. The deceased was a young lady aged about 25 years whose death has occurred in unnatural circumstance. By reason of above, applicant being an inmate of the house where the occurrence occurred and also the husband the deceased, is therefore, under burden to not only explain the manner of occurrence but also his innocence in terms of Sections 106 and 113B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. On the above conspectus, the learned A.G.A. submits 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.

16. Having heard the learned counsel for applicant, the learned A.G.A. for State, 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 prima-facie the death of the deceased is a suicidal death, the Autopsy Surgeon did not find any other external or internal ante mortem injury on the body of the deceased except the ligature mark, the allegation made in the F.I.R. regarding demand of additional dowry and commission of physical and mental cruelty upon deceased on account of non-fulfilment of additional demand of dowry are vague and bald allegation as the same are devoid of material particulars, as such, the same are liable to be ignored at this stage, the judgement of the Supreme Court in **K. Kausar @ Sonam and others(supra)**, 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, yet inspite of above the learned AG.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgement of Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), considering the nature of death of the deceased i.e. suicidal death, the applicant is not liable to be awarded the maximum sentence for the offence under Section 304B I.P.C., 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 expressing any opinion on the merits of the case, applicant has

made out a case for bail.

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

18. Let the applicant- **Durbesh Kumar** involved in aforesaid case crime number be released on bail on his 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.

19. 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 applicants and send him to prison.

Order Date :- 30.11.2023

YK