

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47747 of 2023

Applicant :- Harvesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Kumar,A Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. A Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State.
2. Perused the Court.
3. This application for bail has been filed by applicant-Harvesh seeking his enlargement on bail in Case Crime No. 225 of 2023 under Sections 498A, 323, 504, 306 I.P.C., Police Station-Jaithara District- Etah, during the pendency of trial.
4. Record shows that in respect of an incident, which is alleged to have occurred on 07.07.2023, a delayed F.I.R. dated 08.07.2023, was lodged by first informant-Sachin Kumar Yadav and was registered as Case Crime No. 225 of 2023 under Sections 498A, 323, 504, 306 I.P.C., Police Station-Jaithara District- Etah,. In the aforesaid F. I.R., four persons namely Nilesh (devar), Shilesh (devar), Mithlesh-(mother in law) and Poonam (nanad) of the deceased have been nominated as named accused.
5. It is apposite to mention here that applicant (husband) alongwith mother-in-law of deceased namely Mithlesh have been charge-sheeted whereas other three named accused have been exculpated.
6. Learned counsel for applicant contends that the applicant is not named in the F.I.R. Though the applicant is the husband of the

deceased and a charged sheeted accused inasmuch as charge sheet has been submitted against applicant and others on 19.08.2023, yet applicant is liable to be enlarged on bail. Marriage of applicant was solemnized with the deceased 10 years prior to the date of occurrence. However, after ten years from the date marriage of applicant with the deceased an unfortunate incident occurred on 07.07.2023 in which the wife of applicant died as she committed suicide by hanging herself. Applicant is not named in the F.I.R., However, complicity of applicant has emerged in the statement of witnesses examined under Section 161 Cr.P.. He therefore contends that though an F.I.R. is not the encyclopaedia of the prosecution case, but it must disclose the basic prosecution case. In support of above he has relied upon the following judgement of Supreme Court:

i. Manoj and others Vs. State of Maharashtra, (1999) 4 SCC 268,

ii. Subhash Kumar Vs. State of Uttarakhand, (2009) 6 SCC 641,

iii. Achhar Singh Vs. State of M.P., (2021) 5 SCC 543

7. As per basic prosecution case, complicity of applicant was not alleged in the crime in question. However the departure from the basic prosecution case in the statements of witnesses remains unexplained upto this stage. 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 except for the ligature mark. Prima facie the death of deceased is a suicidal death. Upto this stage no such material has emerged on the record on the basis of which it can be said that applicant has abetted, instigated or conspired in the commission of the crime in question. There is nothing on record to show that the deceased committed suicide on account of an immediate act of applicant. No instigation can be inferred from the conduct of applicant 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.**

6. Even otherwise applicant is man of clean antecedents inasmuch he has no criminal history to his credit except the present one. Applicant is in custody since 31.07.2023 As such, he has undergone more than three months 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 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.

8. Per contra, the learned A.G.A. for State has opposed the prayer

for bail. He submit that since the applicant is the husband of the deceased, a charge sheeted accused therefore he does not deserve any indulgence by this Court. However, he could not dislodge the factual and legal submissions urged by learned counsel for applicant with reference to the record at this stage.

9. 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 marriage of the applicant was solemnized with deceased 10 years prior to the date of occurrence, it is after expiry of the aforesaid period that an unfortunate incident occurred on 07.07.2023 in which wife of applicant died as she committed suicide by hanging herself, prima facie death of the deceased is suicidal death, bonafide of the applicant is explicit from the fact that the autopsy surgeon who conducted autopsy of the body of the deceased did not find any external or internal ante-mortem injury on the body of the deceased, allegations made in the F.I.R. with regard to additional demand of dowry and commission of mental and physical cruelty upon the deceased on account of non-fulfilment of the same are prima facie vague and bald allegations being devoid of material particular, no attempt has been made by the first informant to explain the same in his statement under Section 161 Cr.P.C. However, the same are liable to be ignored at this stage, the judgement Supreme Court in **Kahkashan Kausar @ Sonam and others (supra)**, no such circumstance has emerged on the record on the basis of which it can be concluded that the applicant has abated, instigated or conspired in the commission of the crime or the deceased committed suicide on account of an immediate act of applicant, an offence under Section 306 I.P.C. has to be examined

on a joint reading of the provisions contained in 107 and 306 I.P.C., moreover an offence under Section 306 I.P.C. is subject to trial evidence, as per the material on record no abetment, instigation or conspiracy can be inferred against applicants in the commission of the crime in question, the following judgements of this Court and Supreme Court are attracted :

(i). Sarvesh Vs. State of U.P. 2018 ADJ Online 0163.

(ii). Kanchan Sharma Vs. State of U.P. and Another 2021 SCC OnLine SC 737.

(iii). Mirza Iqbal alias Golu and Another Vs. State of U.P. and Another 2021 SCC OnLine SC 1251.

(iv). Mariano Anto Bruno and Another Vs. Inspector of Police 2022 SCC OnLine SC 1387.

(v). Kashibai and othara Vs. State of Karnataka, 2023, SCC OnLine SC 575.

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 crystalized, yet 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 present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case 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-**Harvesh** 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.

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 him to prison

Order Date :- 8.11.2023
YK