

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47666 of 2023

Applicant :- Nitish Kumar @ Nitesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Brajesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. It has been argued by learned counsel for the applicant that the applicant is husband of the deceased, he is innocent and has been falsely implicated in the present case. Learned counsel further submits that F.I.R. was lodged by the complainant against the applicant and his other family members with the allegation that one day prior the in-laws of her daughter informed him that his daughter is ill, when he reached there he found that his daughter was lying dead and on her left eye and below the chin marks of injury were present, the in-laws of her daughter killed her on account of non fulfillment of additional demand of dowry. Learned counsel for the applicant further submits that in his statement recorded under Section 161 Cr.P.C. the complainant has repeated the same version of the F.I.R. Learned counsel for the applicant further submits after inquest proceedings, postmortem of the deceased was conducted, wherein except one ligature mark all around the neck, one more injury in the shape of contusion of size 2.0 c.m. x 1.0 c.m. just below the left eye was found on her person and cause of death was found to be asphyxia as a result of ante mortem hanging. Learned counsel for the applicant further submits that Sunil Kumar (P.W.1), who is the complainant of the case, in his statement recorded before the court below has stated that the in-laws of her daughter never demanded additional dowry, his daughter was living happily in her matrimonial house and she never made any complaint either against her husband or against her other in-laws, his daughter was not mentally fit and after some time it came to his knowledge that his daughter committed suicide by hanging herself and her in-laws have not murdered his daughter, thus, the complainant has been declared hostile. Learned counsel for the applicant further submits that Smt. Sudha (P.W.2), who is mother of the deceased and Atul Kumar (P.W.4), who is maternal uncle of the deceased, in their

statements recorded before the court below have also repeated the same version of P.W.1, thus, they also have been declared hostile. It has further been argued by the learned counsel for the applicant that, thus, there is bleak chance that prosecution may prove its case beyond reasonable doubt and the applicant may be convicted. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 01.04.2023, having no criminal history.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pretrial stage, therefore, he does not deserve any indulgence, but he has not disputed that complainant and two other witnesses have been declared hostile before the court below.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant-**Nitish Kumar @ Nitesh Kumar**, involved in Case No. 1279 of 2023, arising out of Case Crime No. 94 of 2023, under Sections 498-A, 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Sirsaganj, District Firozabad, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The 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) 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.

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

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

6. 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 in accordance with law.

7. The bail application is **allowed**.

Order Date :- 8.11.2023

Mustaqeem.