

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47772 of 2023

Applicant :- Anil

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Tripathi, Rajeev Kumar

Counsel for Opposite Party :- G.A., Anwar Hussain

Hon'ble Rajeev Misra, J.

1. Heard Mr. Ajay Kumar Pandey Advocate, who has put in appearance on behalf of applicant by filing his vakalatnama in court today, which is taken on record and the learned A.G.A. for State.

2. Perused the Court.

3. This application for bail has been filed by applicant-Anil seeking his enlargement on bail in Case Crime No. 151 of 2023 under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act, Police Station-Saiyan, District- Agra, during the pendency of trial.

4. Record shows that Marriage of applicant Anil was solemnized with Rubi on 06.07.2018. From the aforesaid wedlock, two children namely Bhubnesh and Karyar were born. However, after expiry of a period of five years and three months from the date of marriage of the applicant, an unfortunate incident occurred on 19.07.2023 in which the wife of applicant namely Rubi died as she committed suicide by hanging herself.

5. It is apposite to mention here that no information regarding aforesaid occurrence was given by applicant or any of his family members at the concerned police-station as required under Section

174 Cr.P.C. Subsequently, brother of the deceased namely Ankush lodged a prompt F.I.R. dated 19.07.2023, which was registered as Case Crime No. 151 of 2023 under Sections 498A, 304B I.P.C. and Sections 3/4 Dowry Prohibition Act, Police Station-Saiyan, District- Agra. In the aforesaid F.I.R. seven persons namely Anil (applicant herein), Mahaveer, Meena, Ganesh, Lachchho, Amresh and Sapna have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that marriage of sister of first informant, was solemnized with applicant on 06.07.2018. At the time of marriage sufficient amount of goods and dowry were given. However, subsequently, additional demand of dowry was made. As the said demand of additional dowry was not fulfilled, physical and mental cruelty was committed upon the sister of first informant. Ultimately, the sister of first informant was put to death on 19.07.2023..

7. 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. According to the learned A.G.A., 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 suicidal and the cause of death of deceased was specified as hanging. 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 deceased:

1. Ligature mark 33 x 1.5cm upper part of neck all around except 9 cm left back of neck mark present.

2. Location of ligature mark 5 cm below Rt. ear, 4 cm below chin and 3 cm below left ear.

3. On cut section 8 cm parchment like hyoid bone distracted.

4. 4.0 x 2.0 cm abrasion right mid arm.

8. 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 three of the named accused namely Anil (husband), Mahaveer (father-in-law) and Meena (mother-in-law) is fully established in the crime in question. He accordingly submitted the charge-sheet dated 20.09.2023 whereby above named accused have been charged sheeted whereas other named accused have been exculpated.

9. Learned counsel for applicant submits that though the applicant is the husband of 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 an extreme step of terminating her life by hanging herself. Bonafide of applicant is 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, except for the ligature, one or two abrasion on the right ribs of the prosecutrix were found, they are simple in nature. No fatal or grievous external ante-mortem injury was found on the body of the deceased by the autopsy surgeon. Considering the precarious condition of applicant inasmuch as he has two children, who are infants, as such it cannot be presumed that applicant shall

cause the death of deceased on account of non-fulfillment of additional demand of dowry. No abetment, instigation or conspiracy can be inferred against applicant from the record either. Attention of the court was then invited to the F.I.R. On the basis of same, it is contended by the learned counsel for applicant that the only allegation made in the F.I.R. is that cruelty was committed upon the deceased on account of non-fulfillment of additional demand of dowry. However, the demand of dowry has not been specified. As such the allegations made in the F.I.R. are vague and bald allegations as they are devoid of material particulars. Therefore, 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.**

10. 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. in case of conviction. 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 31 of the paper book. On basis thereof, 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. 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 do not even prima facie appears to be truthful and established against applicant.

11. 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 31.07.2023. As such, he has under-gone approximately four 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 crystallized. 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.

12. Per contra, the learned A.G.A. for State has opposed the prayer for bail. He submits that since the applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. He submits that the death of deceased has occurred within seven years from the date of marriage of applicant. As such, the death of deceased is a dowry death. By reason of above, applicant being an inmate of the house 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 Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. The deceased was a young lady, who had died an unnatural death. 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.

13 Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel for first informant 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 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 in view of 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. and the learned counsel for first informant could not point out any such circumstance from the record necessitating the custodial arrest of the 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, the applicant is not liable to be awarded the maximum sentence for an offence under Section 304B I.P.C. in case he is convicted, 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.

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

15. Let the applicant- **Anil** 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.

16. 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