

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48529 of 2023

Applicant :- Lekhraj @ Bantu

Opposite Party :- State of U.P.

Counsel for Applicant :- Pradeep Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Pradeep Kumar Shukla, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Lekhraj @ Bantu**, seeking enlargement on bail during trial in connection with Case Crime No. 338 of 2023, under Sections 498-A, 323, 306 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Bithari Chainpur, District Bareilly.
4. The first information report of the present matter was lodged on 24.08.2023, under Sections 498-A, 302, 323, 120-B I.P.C. and Section 3/4 Dowry Prohibition Act by Sitaram Sharma against the applicant and 04 other persons alleging therein that the marriage of Lakshmi Devi the daughter of the informant was solemnized with Lekhraj @ Bantu the applicant around 10 years back. The accused persons used to torture her and harass her for dowry. There were 02 children born from the wedlock. The accused persons used to demand sometimes Rs. 01 lakh, sometimes motorcycle, sometimes colour T.V., sometimes fridge and used to torture her. Around two years back they had assaulted her daughter where she had received injuries on her head. On 03.08.2023 at about 3.15 hours he received an information that his daughter has died.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated despite the fact that he is the husband of the deceased. It is argued that during investigation section 302 I.P.C. and section 120-B I.P.C. were deleted and section 306 I.P.C. was added. It is argued that marriage of the deceased with the applicant was solemnized around 10 years back. The couple had two children. There is no consistency regarding demand of any dowry. The same is stated to be multifarious. It is argued that as per the postmortem examination report the deceased has received a single ligature mark on her body and the cause of death has been opined as asphyxia as a result of antemortem hanging. Learned counsel for the applicant argued that there is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased, the applicant has no mens-rea at all, there is no overt act

whatsoever of the applicant, which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence. It is argued that charge-sheet in the matter has been submitted. It is further argued that prior to the present first information report there has never been any complaint regarding any demand of dowry, torture or harassment of the deceased by the accused persons. The applicant has no criminal history as stated in para 25 of the affidavit and is in jail since 10.09.2023.

6. *Per contra*, learned counsel for the State opposed the prayer for bail and argued that the applicant is the husband of the deceased. He is named in the first information report along with other accused persons and there are allegations against him.

7. After having heard learned counsel for the parties and perusing the record, it is evident that there is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased, the applicant has no mens-rea at all, there is no overt act whatsoever of the applicant, which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence.

8. Looking to 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, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant- **Lekhraj @ Bantu**, be released on bail in the aforesaid case crime number on 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) 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.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. 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 and send the applicant to prison.

11. The bail application is **allowed**.

Order Date :- 9.11.2023

AS Rathore

(Samit Gopal,J.)