

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 48317 of 2023

**Applicant :-** Arvind @ Arun Chauhan

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Hitesh Pachori

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Misra,J.**

Heard Mr. Hitesh Pachori, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Arvind @ Arun Chauhan seeking his enlargement on bail in Case Crime No. 077 of 2023, under Sections 498A, 304B IPC, and 3/4 D.P. Act, Police Station- Bahran, District Agra during the pendency of trial.

Record shows that marriage of applicant- Arvind @ Arun Chauhan was solemnized with Jaya on 24.6.2020. However, no issue was born from aforesaid wedlock. However, just after expiry of period of two years and ten months from the date of marriage of applicant, an unfortunate incident occurred on 27.4.2023, in which wife of applicant died as she committed suicide by hanging herself.

It is the case of applicant that no information regarding aforesaid occurrence was given at the concerned Police Station as required under Section 174 Cr.P.C. However, the information regarding aforesaid occurrence was given to the parents of the deceased.

Subsequent to above, the first informant namely Shivam Rajavat (father of deceased) lodged a delayed F.I.R. dated 28.4.2023, which was registered as Case Crime No. 077 of 2023, under Sections 498A, 304B IPC, and 3/4 D.P. Act, Police Station- Bahran, District Agra. In the aforesaid F.I.R., four persons namely, Arvind @ Arun Chauhan, Shyamveer Singh, Nidhi Sikarwar, Abhishek have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that at the time of marriage of deceased sufficient amount

of goods and dowry were given. However applicant and other family members of applicant were dissatisfied with the same. As such, physical and mental cruelty was committed upon prosecutrix. Ultimately, sister of the first informant was put to death.

After registration of aforesaid F.I.R. Investigating Officer proceeded with statutory investigation of aforementioned case crime number in terms of Chapter XII Cr.P.C. Thereafter the inquest (panchayatnama) of the body of the deceased was conducted. In the opinion of witnesses of inquest (panch witnesses), the nature of death of deceased was categorized as suicidal and the cause of death of deceased was specified as hanging. Thereafter, the post mortem of the body of the deceased was conducted. The autopsy surgeon who conducted autopsy of the body of deceased found following ante-mortem injuries on the body of deceased:

***"1. An oblique ligature mark of size 28 cm x 2 cm all around the neck above throid cartilage giving obliquely, interrupted on lateral aspect of left side neck which is 7 cm below from right ear, 4 cm below from chin and 3 cm below from lt. ear interrupted by 13 cm.***

***Base of grove hard and parchment like substutaneous tissue is dry and white***

***2. Vivo (intracath) present in it side."***

In the opinion of the autopsy surgeon the cause of death of deceased was Asphyxia as a result of Anti-mortem hanging.

Learned counsel for applicant contends that though applicant is a named and charge sheeted accused but he is innocent. Applicant has been falsely implicated in above mentioned case crime number. The deceased was a short tempered lady and she has taken an extreme step of terminating her life by committing suicide. Bonafide of the applicant is explicit from the fact that the autopsy surgeon did not find any grievous or fatal external anti-mortem injury on the body of deceased except the ligature mark. Attention of the Court was then invited to the F.I.R. giving rise to present criminal proceedings. With reference to above, it is submitted by learned counsel for applicant that allegations made in the F.I.R. with regard to demand of dowry and commission of cruelty upon deceased are vague and bald allegations, as the same are devoid of material particulars. Placing reliance upon judgement of Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599** he submits that in view of above, the allegations made in the F.I.R. with regard to commission of cruelty upon deceased on account of non

fulfillment of demand of dowry are liable to be ignored by this Court. Prima facie the death of the deceased is a suicidal death. In view of above, the applicant is not liable to be awarded the maximum sentence under section 304-B IPC in case of conviction. Therefore, applicant is liable to be enlarged on bail. Even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 20.4.2023. As such, he has undergone seven months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is husband of the deceased a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. The occurrence giving rise to present criminal proceedings has occurred on 28.4.2023 i.e. just after two years and ten months of marriage of deceased with applicant i.e. 24.6.2020. Moreover, the occurrence has taken place in the house of applicant and within seven years of marriage. As such, the death of the deceased is a dowry death. By reason of above, the burden is upon the applicant himself to not only explain the manner of occurrence in terms of Section 106 and but also his innocence under section 113 of the Evidence Act. However, the applicant has miserably failed to dislodge the aforesaid burden up to this stage. It is thus urged 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.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that prima facie the death of deceased is a suicidal death, as such, the applicant is not liable to be awarded the maximum sentence for an offence under section 304B IPC the bonafide of the applicant is further evident from the fact that the deceased had not sustained any grievous or fatal injuries on her person. Except the ligature mark, the allegation made in the F.I.R. that cruelty

was committed upon the deceased in pursuit of demand of dowry are vague and bald allegations being devoid of material particulars, as such the same are liable to be ignored by this Court at this stage, in view of the judgment of Supreme Court in **Kahkashan Kausar @ Sonam and Others (supra)**, the Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized, yet inspite of above, the learned A.G.A. could not point out any such circumstances from the record necessitating the custodial arrest of applicant during the pendency of trial, the period of incarceration, the clean antecedents of applicant, therefore irrespective of the objection raised by the learned A.G.A. in opposition to the present application for bail but without making any comment on the merits of the case, applicant has made out a case for bail.

Accordingly, the bail application is Allowed.

Let the applicant **Arvind @ Arun Chauhan**, 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 SHALL FILE He has next invited attention of Court to the proviso to Section 437 Cr.P.C. and on basis thereof he contends that since applicant is a lady she is liable to be enlarged on bail. E AN UNDERTAKING TO THE EFFECT THAT HE/SHE 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.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER 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/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

**Order Date :- 30.11.2023**

Arshad