

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48433 of 2023

Applicant :- Awdhesh Kumar Gaur @ Sonu

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjai Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Sanjai Kumar Pandey, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Awdhesh Kumar Gaur @ Sonu seeking his enlargement on bail in Case Crime No.224 of 2023, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Shohratgarh, district Siddharth Nagar, during the pendency of trial.

Perused the record.

Record shows that the marriage of applicant Awdhesh Kumar Gaur @ Sonu was solemnized with Monika (sister of first informant) on 30.11.2020 in accordance with Hindu rites and custom. From the aforesaid wedlock, a male child was born who is said to be aged about one and half years. However, just after expiry of a period of two years and seven months from the date of marriage of the applicant, an unfortunate incident occurred on 09.07.2023 in which the wife of applicant namely Monika died as she committed suicide by hanging herself.

It is the case of the applicant that information regarding the aforesaid occurrence was given by the applicant himself at the concerned police station in terms of Section 174 CrPC.

On the above information, the inquest (Panchayatnama) of the deceased was conducted on 09.07.2023. 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 was specified as hanging. Subsequent to above, the post-mortem of body of the deceased was conducted on 10.07.2023. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased, the cause of death of the deceased was asphyxia as a result of ante-mortem hanging. The autopsy surgeon found following ante-mortem injuries on the body of deceased-Monika :-

"Ante-mortem Injuries :-

Dark brown Ligature mark of 27 cm present over neck, width 1.0 cm & 6.0 cm below Rt ear lobule 7.0 cm below chin & 5 cm below Lt ear lobule, except 5.0 cm being Lt ear pinna on cutting gature mark white hard and glistening present & both hands denched."

After aforementioned exercise had been undertaken, the brother of the deceased, namely, Sunil Kumar Gaur lodged a delayed F.I.R. dated 10.07.2023, which was registered as Case Crime No.0224 of 2023, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Shohratgarh, district Siddharth Nagar. In the aforesaid F.I.R., the applicant Awdhesh Kumar Gaur @ Sonu has been nominated as solitary named accused.

Subsequent to above, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. He examined the first informant and other witnesses under Section 161 CrPC. The witnesses so examined have substantially supported the FIR. On the basis of above and other material collected by the Investigating Officer during course of investigation, he came to the conclusion that complicity of applicant Awdhesh Kumar Gaur @ Sonu (husband of the deceased) is established in the crime in question. He, accordingly, submitted the charge-sheet dated 20.07.2023, whereby the applicant has been charge-sheeted under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act.

Learned counsel for applicant contends that though applicant is the husband of the deceased, a named and charge-sheeted accused yet he is liable to be enlarged on bail. According to the learned counsel for applicant, the occurrence in question has occurred after expiry of a period of two years and seven months from the date of marriage of the applicant with the deceased. The deceased was a short tempered lady who has taken the extreme step to commit suicide for terminating her life by hanging herself. The bona fide of the applicant is further explicit from the fact that the autopsy surgeon who conducted autopsy of the body of deceased did not find any other external ante-mortem injury on the body of the deceased except the ligature mark. 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 he is convicted. Learned counsel for applicant then contends that considering the precarious condition of the applicant, inasmuch as, there is a child in the family who is aged about one and half years therefore, it cannot even be imagined that the applicant shall even abet in the commission of crime as the child would suffer.

Attention of the Court was then invited to the FIR. With reference to above, the learned counsel for applicant submits

that the only allegation made in the FIR against applicant is to the effect that cruelty was committed upon the deceased on account of deficient dowry given at the time of marriage and for fulfillment of additional demand of dowry. He submits that the said allegation made in the FIR is not only false and concocted but also vague and bald allegations. Additional demand of dowry alleged to have been made has not been specified. The same is devoid of material particulars. Attention of the Court was then invited to the judgement of the Supreme Court in **Kahkashan Kausar @ Sonam & others Vs. State of Bihar (2022) 6 SCC 599** and on basis thereof it is urged by the learned counsel for applicant that since the allegations made in the FIR with regard to commission of cruelty on account of non-fulfillment of additional demand of dowry are devoid of material particulars therefore, the same are liable to be ignored by this Court at this stage. In short, the submission is that since the alleged demand of additional dowry has not been specified in the FIR therefore, it cannot be said that cruelty was committed upon the deceased on account of non-fulfillment of additional demand of dowry. Attention of the Court was then invited to the statement of the first informant recorded under Section 161 CrPC, which is on record at page 51 of the paper book. The first informant in his statement has improved upon the prosecution story as unfolded in the FIR. The first informant in his aforesaid statement has now stated that additional demand of a Splender motorcycle was raised and as the said demand was not fulfilled, physical and mental cruelty was committed upon the deceased by the named accused i.e applicant herein. Learned counsel for applicant then contends that though the FIR is not an encyclopedia of the prosecution case but it must disclose the basic prosecution case. To buttress his submission he has relied upon the following judgements of Supreme Court : **Manoj and Ors Vs State of Maharashtra (1999) 4 SCC-268; Subhash Kumar Vs. State of Uttarakhand (2009) 6 SCC-641; Amar Nath Jha Vs. Nand Kishore Singh and Ors (2018) 9 SCC-137**. In the light of the above, it is urged by the learned counsel for applicant that the allegation with regard to demand of Splender motorcycle is conspicuous by its absence in the FIR and the departure so made in the subsequent statement of the first informant under Section 161 CrPC remains unexplained up to this stage. As such, no credence can be attached to the same. On the above premise, he therefore contends that the applicant is liable to be enlarged on bail.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 11.07.2021. As such, he has undergone more than four month of incarceration. The police report under Section 173 (2) CrPC has already been submitted against the applicant therefore, the entire evidence sought to

be relied upon by prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged on the basis of which it can be said that custodial arrest of applicant is absolutely necessary during the pendency of trial. He, therefore, contends that the 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 vehemently opposed the prayer for bail. He submits that since the applicant is the husband of the deceased a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this Court. The occurrence has taken place in the house of the applicant and within seven years of marriage of the applicant. The applicant is husband of the deceased and also an inmate of the house in which the occurrence has occurred. As such, the burden is upon the applicant to not only explain the manner of occurrence but also his innocence as per Section 106 and 113-B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden up to this stage. The deceased was a young lady aged about 24 years whose death has occurred in unnatural circumstances. He, therefore, contends 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, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that in the FIR giving rise to present criminal proceeding the allegations with regard to demand of dowry and commission of cruelty upon the deceased on account of non-fulfillment of demand of additional dowry have not been substantiated by material particulars, a departure has been made by the first informant in his statement under Section 161 CrPC, the departure so made remains unexplained up to this stage, though the FIR is not an encyclopedia of the prosecution story but it must disclose the basic prosecution case, the judgements of the Supreme Court referred to above, the omission on the part of the first informant in not specifying the additional demand of dowry alleged to have been demanded by the named/charge-sheeted accused and the manner in which the cruelty was committed upon the deceased in the FIR is a suspicious circumstance against the prosecution which is yet to be explained, the allegation made in the F.I.R. with regard to commission of physical and mental cruelty upon the deceased for non fulfillment of demand of additional dowry being devoid of material particulars are therefore liable to be ignored by this Court at this stage in

view of the law laid down by Apex Court in **Kahkashan Kausar @ Sonam & others (supra)**, the police report under Section 173 (2) CrPC i.e. charge-sheet having been submitted therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet inspite of above the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgement of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (SC) 373 (paragraph 5)**, in view of the nature of death of the deceased the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case he is convicted, the bona fide of the applicant is further explicit from the fact that except for the ligature mark, no other external ante-mortem injury was found on the body of the deceased, the clean antecedents of the applicant and 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 making any comments on the merits of the case, the applicant has made out a case for bail.

Accordingly, the bail application is allowed.

Let the applicant **Awdhesh Kumar Gaur @ Sonu**, involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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 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.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) 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.

(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 him 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 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.

Rks.