

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48632 of 2023

Applicant :- Prempal

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudarshan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Sudarshan Singh, the learned counsel for applicant and the learned AGA for State.

Perused the record.

This application for bail has been filed by the applicant Prempal seeking his enlargement on bail in Case Crime No. 387 of 2020, under Sections 498A, 304B, 323 IPC and Sections 3/4 Dowry Prohibition Act, P.S. Shahi, District- Bareilly during the pendency of trial.

Record shows that marriage of the applicant was solemnized with Sushila in the year 2019. The date of marriage of the applicant has not been brought on record. However, just after expiry of a short period from the date of marriage of applicant, an unfortunate incident occurred on 25.9.2020, in which the wife of applicant died as she consumed some poisonous substance. As per the viscera report of the deceased dated 3.9.2021, a foreign chemical compound namely Organo Phosphorous Insecticide was found in the body part of the deceased sent for chemical examination.

In respect of the said incident, an F.I.R. dated 25.9.2020 was lodged promptly and was registered as Case Crime No. 387 of 2020, under Section 498A, 304B, 323 IPC and Sections 3/4 Dowry Prohibition Act, P.S. Shahi, District- Bareilly. In the aforesaid F.I.R., six persons namely Prem Pal (husband), Mohan Swaroop (jeth), Sripal (jeth), Nukata Prasad (father-in-law), mother-in-law (name not known) and Sevaram (Nandoi) were named as accused.

Upon completion of the investigation of the aforesaid case crime number in terms of Chapter 12 Cr.P.C., Investigating Officer submitted the charge-sheet dated 15.1.2022, whereby applicant

Prem Pal was charge sheeted under Sections 498A, 304B, 323 IPC and Sections 3/4 Dowry Prohibition Act, whereas vide supplementary charge sheet dated 8.3.2022, whereby two persons i.e. the father-in-law and mother-in-law of the deceased have been charge sheeted under Sections 498A, 304B, 323 IPC and Sections 3/4 Dowry Prohibition Act.

After submission of aforementioned charge sheet, cognizance was taken by the concerned Magistrate. As offence complained of is triable exclusively by Court of Sessions, consequently, concerned Magistrate committed the case to the Court of Sessions. Resultantly, Sessions Trial No. 196 of 2022 (State Vs. Prem Pal and others), under Sections 304B, 498A IPC and 3/4 D.P. Act, P.S. Shahi, District- Bareilly came to be registered. Upto this stage, the first informant i.e. P. W. 1 Poshaki Lal has been examined.

With reference to the statement-in-chief/examination-in-chief of aforesaid witness, it is urged by the learned counsel for applicant that no allegation regarding demand of dowry or commission of cruelty upon the deceased by the husband has been made. He, therefore, contends that in view of above, 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 19.10.2021. As such, he has undergone more than 2 years, one and a half month of incarceration. The police report in terms of Section 173 (2) Cr. P. C. i.e. charge sheet has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, Upto this stage, no such circumstance has emerged from the record necessitating the custodial arrest of applicant during the pendency of trial. He, therefore, submits 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, learned AGA opposed the prayer for bail. He submits that since the applicant is husband of the deceased a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Learned A.G.A. further submits that applicant has criminal history of one case, which has not been explained. The death of the deceased has occurred in her marital home after expiry of a short period from the date of her marriage. As such, the death of the deceased is highly unnatural. Since the death of the deceased has occurred before expiry of 7 years from

the date of her marriage and at her marital home and since the applicant is husband of the deceased and an inmate of the house, in which occurrence has occurred, the burden is upon the applicant himself to not only explain the manner of occurrence, but also his innocence in terms of Sections 106 of 113 B of the Evidence Act. However, the applicant has miserably failed to discharge said burden upto this stage. It is next contended by the learned A.G.A. that even though this Court is a superior Court but dictates of prudence require that the Court hearing bail application even if it is superior Court should refrain itself from evaluating the evidence which has emerged during the course of trial. Any observation made by the Bail Court upon the evidence that has emerged during the course of trial may affect the prosecution or defence. Furthermore, the entire prosecution evidence has not yet been recorded, therefore, simply on the basis of recital in the statement of the P.W. 1 innocence of the applicant cannot be conclusively interfered. On the above premise, the learned A.G.A. contends that no sympathy be shown by this Court in favour of applicant.

When confronted with above, the learned counsel for applicant could not overcome the same.

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 the objection raised by the learned A.G.A. could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varied submission raised by the learned counsel for applicant in support of the present application for bail, but without making any comment on the merits of the case, this Court does not find any good or sufficient ground to enlarge he applicant on bail.

As a result, present application for bail fails and is liable to be rejected.

It is, accordingly, **rejected**.

Order Date :- 14.12.2023

HSM