

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48873 of 2023

Applicant :- Smt. Laxmi

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. Learned counsel for the applicant submits that applicant is innocent and has falsely been implicated in the present case. Learned counsel further submits that prior to the alleged incident a first information report was lodged by the complainant on 04.06.2023 against the applicant and two other accused persons, namely, Dolu @ Manvendra and Devendra (husband of the applicant) bearing Case Crime No. 81 of 2023, under Section 376, 120-B I.P.C. and Section 3/4 of Protection of Children From Sexual Offences Act at Police Station Ait, District Jalaun, alleging therein that on 28.03.2023 the applicant and her husband took her minor daughter aged about 17 years to the house of one late Harikishun Prajapati, where applicant and her husband told the victim to sleep with the co-accused Dolu @ Manvendra, who committed her rape forcibly. Learned counsel for the applicant further submits that the present F.I.R. has been lodged by the complainant on 06.06.2023 against the applicant and her husband with the allegation that with respect to the aforesaid incident of commission of rape of her minor daughter both the accused persons instigated her husband on account of which he committed suicide by hanging himself. Learned counsel for the applicant further submits that needless to say that as per prosecution version the deceased committed suicide himself by hanging, therefore, after inquest proceedings the postmortem of the husband of complainant (deceased) was conducted wherein except one ligature mark all around the neck no other injury was found on the person of the deceased and his cause of death was found to be asphyxia due to ante mortem hanging, however, in her statement recorded under Section 161 Cr.P.C. the complainant has repeated the same version of the F.I.R., whereas daughter of the

complainant in her statement recorded under Section 161 Cr.P.C. has categorically stated that with regard to incident of her commission of rape the applicant and her husband had made a rumor in the village that she had herself made sexual relations with Dolu @ Manvendra, on account of which feeling ashamed her father had committed suicide on 05.06.2023 under mental stress and pressure by hanging himself. Learned counsel for the applicant further submits that father and mother of the deceased had also repeated the same version of F.I.R. in their statements recorded under Section 161 Cr.P.C. Learned counsel for the applicant further submits that in the statements of complainant, mother and father of the deceased, specially in the statement of the daughter of the deceased there is no ingredient of Section 306 I.P.C. that applicant had ever instigated the deceased to commit suicide. Learned counsel for the applicant further submits that there is no independent or eye witness of the incident, the applicant had not instigated the deceased to commit suicide, there are several contradictions in the statements of complainant and witnesses, the applicant has falsely been implicated in the case only on the basis of hearsay rumor made by the villagers. He, thus, submits that no offence against the applicant under Section 306 I.P.C. is made out and she has falsely been implicated in the present case. Learned counsel for the applicant further submits that applicant and her husband have already been enlarged on bail in the first F.I.R. lodged by the complainant at Case Crime No. 81 of 2023 by a coordinate Bench of this Court vide order dated 03.10.2023 and 25.09.2023 passed in Criminal Misc. Bail Application Nos. 37352 and 39268, both of the year, 2023, respectively. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that she is ready to cooperate with the process of law and shall faithfully make herself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon her. Learned counsel for the applicant further submits that except aforesaid two criminal cases there is no other case in the criminal history of the applicant. He next submits that applicant is languishing in jail since 05.06.2023.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that applicant is involved in a heinous crime, therefore, she does not deserve any indulgence.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant-**Smt. Laxmi**, involved in Session Trial No. 241 of 2023, arising out of Case Crime No. 84 of 2023, under Section 306 I.P.C., Police Station Ait, District Jalaun, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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 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.

(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 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 her, 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 her in accordance with law and the trial court may proceed against her under Section 229-A IPC.

6. 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 in accordance with law.

7. The bail application is **allowed**.

Order Date :- 17.11.2023

Mustaqeem.