

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48831 of 2023

Applicant :- Smt. Kunti Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Bhan Dubey, Anil Kumar Dubey

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48847 of 2023

Applicant :- Raju @ Rajesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Sati Shanker Tripathi, A.K. Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. C.B. Dubey, the learned counsel for applicant- Smt. Kunti Devi, Mr. A.K. Mishra, the learned counsel for applicant- Raju @ Rajesh and the learned A.G.A. for State.

Perused the record.

These applications for bail have been filed by applicants- Smt. Kunti Devi and Raju @ Rajesh seeking their enlargement on bail in Case Crime No. 52 of 2023, under section 304 IPC, Police Station- Shahi, District Bareilly, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 27.2.2023, a belated F.I.R. dated 1.3.2023 was lodged by first informant Bhupal and was registered as Case Crime No. 52 of 2023, under sections 304 IPC, Police Station- Shahi, District Bareilly. In the aforesaid F.I.R. four persons namely, Roopchandra, Kunti Devi, Ajay Kumar and Raju have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is that named accused assaulted Kishan Pal, brother of first informant with Lathi

and Danda on 27.2.2023 on account of which he sustained injuries. Ultimately, the victim succumbed to the injuries sustained by him on the next date i.e. 28.7.2023.

Subsequent to above, information regarding aforesaid occurrence was given by the first informant at the concerned Police Station. Consequently, 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. In the opinion of the witnesses of inquest, the death of deceased occurred in suspicious circumstances. Thereafter, post mortem of the body of deceased was conducted. In the opinion of autopsy surgeon who conducted autopsy of the body of deceased, the cause of death of deceased was opined as coma shock due to ante-mortem injuries. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"1. Contusion 15 x 10 cm size present over rt. side a skull internal region above 5 cm. from rt. ear.

2. 3 x 2 cm. abraded contusion on rt. scapula.

3. Abraded contusion 12 x 7 cm above from rt side buccate"

During course of investigation, Investigating Officer examined first informant and others witnesses under section 161 CR.P.C. Witnesses so examined have supported the F.I.R. On the basis of above and other material collected by Investigating Officer during course of investigation, which is substantially adverse to applicants, he opined to submit charge sheet. Accordingly Investigating Officer submitted the charge sheet dated 24.7.2023. whereby applicants have been charge-sheeted under sections 304 IPC.

Learned counsel for applicants submits that though the applicants are named and charge sheeted accused, yet they are liable to be enlarged on bail. Applicant-Smt. Kunti Devi is a lady. Referring to the provisions contained in proviso to section 437 Cr.P.C. it is urged that since aforesaid applicant is a lady therefore she is liable to be enlarged on bail. It is then contended that present case is a case of grave and sudden provocation. The occurrence has taken place at the spur of the moment. There is no calculated mens rea with the applicant to commit the alleged crime. As such, criminality committed by applicant is culpable homicide not amounting to murder. Accordingly the case in hand is covered under the IV exception to Section 300 IPC. It is thus urged that the

case in hand shall not go beyond Section 300 Part II, IPC. As such, applicants are liable to be enlarged on bail.

Even otherwise, applicants are of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants are in jail since 3.7.2023. As such, they have undergone four months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. It is thus urged that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they 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 applicants are named as well as charge sheeted accused, therefore they do not deserve any indulgence by this Court. The deceased was young man aged about 28 years, who has died on account of deliberate Act of applicants. As such, 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 applicants, with reference to the record at this stage.

Having heard the learned counsel for applicants, 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 applicants, accusation made coupled with the fact, that applicant-Kunti Devi is a lady by virtue of provisions contained in proviso to section 437 Cr.P.C. applicant Kunti Devi being a lady is liable to be enlarged on bail, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized, inspite of above, learned A.G.A. could not point out any such circumstance from the record necessitating custodial arrest of applicants during pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, the clean antecedents of applicants, the period of incarceration undergone but without making any comments on the merits of the case, applicants have made out a case for bail.

Accordingly, the bail application is **Allowed**.

Let the applicants- **Smt. Kunti Devi** and **Raju @ Rajesh**, 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 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 :- 6.12.2023

Arshad