

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49641 of 2023

Applicant :- Sinku

Opposite Party :- State of U.P.

Counsel for Applicant :- Shikhar Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Shikhar Awasthi, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant Sinku, seeking his enlargement on bail in Case Crime No. 59 of 2019, under Sections 302, 120-B, IPC, Police Station-Khudhfatehgarh, District Sambhal, during the pendency of trial.

4. The first bail application of applicant was rejected by this Court vide order 15.3.2021. For ready reference, same is reproduced herein under:

"List has been revised. None appears to press this bail application on behalf of the applicant.

It appears that on the previous date also none was present to press this bail application.

The present application is dismissed for non-prosecution. "

5. Record shows that marriage of applicant was solemnized with Anita in the year 2011. However, an unfortunate incident occurred on 24.11.2018, in which the wife of applicant Sunita sustained burn injuries. Subsequently, in respect of said occurrence, a belated F.I.R. dated 27.11.2028 came to be lodged by Satyadev Sharma, father of the deceased and was registered as Case Crime No. 59 of 2019, under Sections 302, 120-B, IPC, Police Station-Khudhfatehgarh, District Sambhal. In the aforesaid F.I.R., four persons namely, Sinku, Rameshwar Prasad, Shashiwala, Smt. Sarika have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused deliberately immolated the daughter of first informant. Accordingly, she sustained burn injuries and scummbed to the same.

7. It is apposite to mention here after the occurrence had taken place the witness was got admitted at Ishan Hospital for medical treatment, whereas ultimately, she died. The information regarding death of the deceased was given at concerned Police Station by the ward boy of Ishan Hospital. It is on the aforesaid information that the inquest (Panchayatnama) of the deceased was conducted. In the opinion of witnesses of inquest (panch witnesses), the nature of death of deceased could not be categorized. The cause of death was however specified as burn injuries. Thereafter post mortem of the body of deceased was conducted. The autopsy surgeon who conducted autopsy of the body of deceased, opined that cause of death of deceased is septicemic shock. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"Superficial to deep burn injuries on face, neck B-shoulder mid part of dorsal side of Rt. Upper vaginal area and part of mid back.

Slough granulation.... over the burnt area.

List of redness"

7. One fact which needs to be noticed is that after the occurrence had taken place, the victim was got admitted at Ishan Hospital for medical treatment. While the victim was under going treatment, at aforesaid hospital her dying declaration was recorded by Tehsildar, copy of which is on record at page 71 of the paper book. The victim in her aforesaid statement has clearly implicated the applicant in the crime in question. During course of investigation, Investigating Officer examined first informant and other witnesses under section 161 Cr.P.C. The first informant in his statement under section 161 Cr.P.C. has fully supported the F.I.R. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of two of the named accused namely, Sinku (husband of deceased) and Smt. Sarika (Jethani of the deceased) is established in the crime in question. He, accordingly submitted the charge sheet dated 30.7.2019, whereby aforesaid named accused have been charge sheeted under sections 302, 120-B, IPC, whereas the other two named accused have been exculpated.

8. Learned counsel for applicant contends that though the applicant

is husband of deceased, a named and charge sheeted accused, yet he is liable to be enlarged on bail. Attention of the Court was invited to the dying declaration of deceased. With reference to above, it is contended by the learned counsel for applicant, there is no material to show that victim was in a fit state of mental and physical health to give her dying declaration. There is no certificate of the Doctor either. In the dying declaration victim has come forward with a new story which is alien to the F.I.R. On the aforesaid conspectus and irrespective of the dying declaration of deceased, he submits that applicant is liable to be enlarged on bail.

9. Even otherwise applicant is a man of clean antecedents having no criminal history to his credit, except the present one. Applicant is in jail since 25.5.2019. As such, he has undergone five years of incarceration. The police report in terms of Section 173(2) Cr.P.C. i.e. charge-sheet has already been submitted, therefore 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 course of trial. He, therefore submits 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.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since 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 applicant therefore, the burden is upon the applicant himself to explain the manner of occurrence in terms of Section 106 of Indian Evidence Act. The affidavit filed in support of present application runs into as many as 54 paragraphs but no explanation has been offered regarding the manner of occurrence in question as well as the innocence of applicant. With regard to the issue relating to the credibility of the dying declaration of deceased, the learned A.G.A. submits that the said issue can be decided effectively by Court below. Charge sheet has already been submitted on 30.7.2019. A period of more than four years have rolled by and the trial has already commenced. As such, interest of justice shall better be served in case a direction is issued to court below to conclude the trial itself instead of enlarging the applicant on bail. As such, the bail application is liable to be rejected.

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

12. 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 objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant, therefore irrespective of the varied submissions urged by the learned counsel for applicant in support of 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 the applicant on bail.

13. In view of above, the application fails and is liable to be rejected.

14. It is accordingly **rejected**.

Order Date :- 13.12.2023

Arshad