

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49593 of 2023

Applicant :- Sumit

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikas Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Vikas Sharma, the learned counsel for applicant and the learned A.G.A. for State.

This repeat application for bail has been filed by applicant Sumit seeking his enlargement on bail in Case Crime No.659 of 2018, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, police station Khurja Nagar, district Bulandshahar, during the pendency of trial i.e. Sessions Trial No.292 of 2019 (State Vs. Sumit) arising out of aforementioned case crime number and now pending in the court of District & Sessions Judge, Bulandshahar.

Perused the record.

The first bail application of applicant was rejected by this Court by a detailed order dated 09.12.2020 passed in Criminal Misc. Bail Application No.54008 of 2019. For ready reference, the order dated 09.12.2020 is reproduced herein-under :-

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

This bail application has been filed by the applicant seeking bail in Case Crime No. 659 of 2018, under Sections 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act, Police Station Khurja Nagar, District Bulandshahar, during pendency of trial.

Learned counsel for the applicant has submitted that the applicant is wholly innocent and has been falsely implicated in the present case due to ulterior motive.

Learned counsel for the applicant has next submitted that applicant is husband of the deceased and his wife died on account of insect bite. The applicant is in jail since 09.01.2019, as such, he be released on bail.

Per contra, learned A.G.A. has vehemently opposed the prayer for bail and has submitted that specific allegation of demand of dowry has been made against the applicant, for which, she was tortured and maltreated.

Learned AGA has further drawn the attention of the Court to the viscera report of the deceased, which shows that victim died on account of poisoning and organochloro insecticide has been found in her viscera report.

Learned AGA has next submitted that trial in the present case is already in progress and father of the victim-deceased has been examined, who has supported the prosecution story, as such, no case for bail is made out.

Considering the submissions of learned counsel for the parties and looking to the seriousness and gravity of the offence, evidence, complicity of the accused, I do not find it is a fit case for bail at this stage. Accordingly, this bail application is rejected.

However, trial court is expected to make all endeavours to conclude the trial within a period of six months from the receipt of certified copy of this order, without granting any unnecessary adjournment to either of the parties and there is no other legal impediment in concluding the trial."

Learned counsel for applicant contends that after completion of statutory investigation of aforementioned case crime number, charge-sheet was submitted against applicant on 12.02.2019. After submission of aforementioned charge-sheet, cognizance was taken upon same by the concerned Magistrate vide cognizance taking order dated 07.06.2019. Since criminality alleged by the applicant is exclusively triable by the court of Sessions accordingly, the concerned Magistrate committed the case to the court of Sessions. Resultantly, Sessions Trial No.292 of 2019 (State Vs. Sumit) came to be registered. Consequently, charges were framed against applicant who denied the same and pleaded innocence. Resultantly, the trial proceedings commenced.

At this juncture, the learned counsel for applicant has invited the attention of the Court to the charge-sheet and on basis thereof he contends that as many as 19 prosecution witnesses have been nominated therein. However, up to this stage, only two prosecution witness of fact i.e. PW-1-Vijendra Singh (first informant) and PW-2-Rajendra (relative of first informant/independent witness) have been examined before the court below. The statement of PW-3-S.I. Ranveer Singh (Investigating Officer) is still being recorded and has not yet been completed. On the above premise, he contends that the trial is proceeding at a snail's pace. Even though a period of more than four years have elapsed from the date of the committal order yet the trial has not concluded. Referring to the judgement of Supreme Court in **Abdul Rehman Antulay and Others Vs. R.S. Nayak and Another 1992 (1) SCC 225**, learned counsel for applicant urged that right to speedy trial is now recognized as a fundamental right of an accused. Since the applicant is in custody therefore, he cannot be held responsible for the delay in conclusion of trial. The applicant cannot be made to suffer on account of the lackadaisical approach of the prosecution in pursuing the trial. On the above premise, he therefore contends that applicant is liable to be enlarged on bail.

Attention of the Court was also invited to the judgement of the Apex Court in the case of **Sumit Subhashchandra**

Gangwal and another Vs. State of Maharashtra and another, 2023 Livelaw SC 373 (Paragraph 5) and on the basis thereof he submits that since the charge-sheet has been submitted against the applicant, 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.

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 09.01.2019. As such, he has undergone more than four years and ten months of incarceration. According to the learned counsel for applicant, in view of the changed facts and circumstances as noted herein-above, no useful purpose shall be served in prolonging the custodial arrest of the applicant. It is thus urged that the applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, she 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 applicant is the husband of the deceased, a named/charge-sheeted accused therefore, he does not deserve any indulgence by this Court. The deceased was a young lady. The occurrence has taken place in her marital home just after expiry of approximately one year and twenty days from the date of her marriage. As such, the same is highly un-natural. The occurrence has taken place within seven years of marriage of the deceased and that too at her matrimonial home. As such, the death of the deceased is a dowry death. Applicant is the husband of the deceased and an inmate of the house. By reason of above, the burden is upon the applicant to not only explain the manner of occurrence but also his innocence as per Sections 106 and 113-B of the Evidence Act. However, upto this stage, the applicant has miserably failed to discharge the said burden. Learned A.G.A. has then referred to the order-sheet of aforementioned Sessions Trial and on basis thereof he contends that the trial has been adjourned frequently on account of the absence of applicant or due to adjournment prayed for by other co-accused. He, therefore, contends that no sympathy be shown by this Court in favour of applicant.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, complicity of the accused, accusation made, nature and gravity of offence and coupled with the fact that though applicant is the husband of the deceased a named/charge-sheeted accused, the death of the deceased has occurred within seven years of her marriage with the applicant yet the

Court finds that the bona fide of the applicant is explicit from the fact that except for the ligature mark no other external or internal ante-mortem injury was found on the body of the deceased by the autopsy surgeon, prima facie the death of the deceased is a suicidal death and therefore the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC in case he is convicted, after completion of investigation the charge-sheet was submitted by Investigating Officer on 12.02.2019 and the case was committed to the court of Sessions resulting in Sessions Trial No.292 of 2019 (State Vs. Sumit), in spite of the fact that a period of more than four years have expired from the date of committal order the trial has not yet concluded, however up to this stage only two prosecution witnesses of fact i.e. PW-1-Vijendra Singh (first informant) and PW-2-Rajendra (relative of first informant/independent witness) have been examined, according to the learned counsel for applicant the statement of PW-3 S.I.-Ranveer Singh (Investigating Officer) is being recorded but not completed, as such the trial is proceeding at a snail's pace, by virtue of the law laid down by Apex Court in **Abdul Rehman Antulay and Others (supra)**, an accused also has the right to speedy trial and since the applicant is in custody therefore, he cannot be held responsible for the delay in the conclusion of trial, perusal of the order-sheet does not lead to the inference that the delay in conclusion of trial has occurred only on account of the conduct of applicant or other co-accused, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal and Another (supra)**, the clean antecedents of the applicant, 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 **Sumit**, 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 :- 8.12.2023.

Rks.