

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 49493 of 2023

**Applicant :-** Badri Prasad Yadav

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Akhilesh Kumar Mishra

**Counsel for Opposite Party :-** G.A.,Raman Pandey

**Hon'ble Rajeev Misra,J.**

1. Heard Mr. Akhilesh Kumar Mishra, the learned counsel for applicant, the learned A.G.A. for State and Mr. Raman Pandey, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Badri Prasad Yadav, seeking his enlargement on bail in Case Crime No. 200 of 2023, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Parasrampur, District-Basti during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 19.06.2023, a prompt FIR dated 19.06.2023 was lodged by first informant-Nandlal Yadav (father of the deceased) and was registered as Case Crime No. 200 of 2023, under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Parasrampur, District-Basti. In the aforesaid FIR, 4 persons namely (1) Durgesh (Husband), (2) Badri Prasad (Father-in-law and applicant herein), (3) Mukesh (Devar) and (4) Kanti (Jethani) of deceased have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that marriage of Sushila (daughter of first informant) was solemnized with Durgesh Yadav. From the aforesaid wedlock, a daughter namely Anuradha was born, who is aged about 2 years. Subsequently, additional demand of dowry by way of a motorcycle (Puslar), gold chain and one Lac Rupees in cash was raised. However, as the demand of additional dowry was not fulfilled, cruelty was committed upon the daughter of first informant. Ultimately, the daughter of first informant was put to death.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The inquest (*Panchayatnama*) of the body of deceased was conducted on 19.06.2023. In the opinion of the witnesses of inquest (*Panch witnesses*), the nature of death of deceased was categorized as suicidal and the cause of death of deceased was specified as hanging. Subsequent to above, the post mortem of the body of deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased, opined that the cause of death of deceased is Asphyxia as a result of ante-mortem hanging. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

***"Total circumstances of neck 29 cm. at the level of thyroid cartilage. A ligature of 25 cm. x 1.5 cm. obliquely present front and left side of neck above thyroid cartilage present.***

***Ligature mark starting from 3cm. below right ear pinna, 4 cm. below chin, 6 cm. below left ear pinna***

***Surface of ligature mark dry hard parchment paper like.***

***On cutting on subcutaneous tissue under ligature mark glistening and whitening present.***

***Contusion on parieto occipital bone size 12 x 6 cm., 7 cm. below from left ear.***

***Abrasion x 1 cm. on mid off forehead size of 1 x 1 cm.***

***Abrasion on left side of forehead size 1 x 1 cm., 2 cm. above from left eye brow.***

***Abrasion on left upper arm size 2 x 0.5 cm. 8 cm. below left from shoulder joint.***

***Abraded contusion on left side of back size 5 x 3 cm. (scapular region)."***

7. Investigating Officer further examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of only 2 of the named accused i.e. Durgesh Yadav (Husband) and Badri

Prasad Yadav (Father-in-law) of the deceased is established in the crime in question. He, accordingly, submitted the charge sheet dated 12.08.2023 whereby aforementioned named accused have been charge sheeted under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act.

8. Learned counsel for applicant contends that though applicant is the father-in-law of deceased, a named as well as charge sheeted accused yet he is liable to be enlarged on bail. The deceased was a short tempered lady and she has taken the extreme step of committing suicide by hanging herself. The bona-fide of the applicant is further explicit from the fact that except for the ligature mark, no other external ante-mortem injury was found on the body of deceased. Prima-facie the death of deceased is a suicidal death. As such, the applicant is not liable to be awarded the maximum sentence under Section 304-B IPC, in case of conviction. From the aforesaid wedlock of deceased and the son of applicant, a daughter namely Anuradha was born, who is now aged about 2 years and is being maintained by the family of present applicant itself. The occurrence giving rise to present criminal proceedings has occurred after expiry of a period of 2 years and 7 months from the date of marriage of deceased. On the above conspectus, the learned counsel for applicant contends that in view of the precarious condition of applicant, it can hardly be imagined that applicant shall even abet in the commission of crime in question. Furthermore, applicant is the father-in-law of deceased and therefore, he cannot be said to be the beneficiary of the alleged demand of dowry. The husband of deceased i.e. the son of the applicant is already languishing in jail. Applicant is an old man aged about 65 years, which fact is categorically pleaded in paragraph 20 of the affidavit filed in support of bail application. He, therefore, submits that since applicant is an old man, he is also entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C. He, therefore, submits that applicant is liable to be enlarged on bail.

9. 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 02.08.2023. As such, he has undergone more than 4 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency

of trial. On the above premise, he 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. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is the father-in-law of deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The death of deceased has occurred just after expiry of a period of 2 years and 2 months from the date of her marriage. The deceased was a young lady aged about 25 years, who has died in unnatural circumstance. Since the death of deceased has occurred within 7 years of her marriage and at her marital home, therefore, the same is a dowry death. Applicant is the father-in-law of deceased and an inmate of the house in which, the occurrence occurred. As such, the burden is upon the applicant to not only explain the manner of occurrence but also his innocence in terms of Section 106 and 113-B of the Evidence Act. However, applicant has miserably failed to discharge the said burden up to this stage. They, therefore, contend that no sympathy be shown by this Court in favour of applicant. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that prima-facie, the death of deceased is a suicidal death, the bona-fide of applicant is explicit from the fact that as per the opinion expressed by Autopsy Surgeon, except for the ligature mark, no other external ante-mortem injury was found on the body of deceased, prima-facie, the death of deceased is a suicidal death, therefore, applicant is not liable to be awarded the maximum sentence under Section 304-B IPC, in case of conviction, the son of applicant i.e. husband of deceased is already languishing in jail, applicant cannot be said to be the beneficiary of alleged demand of dowry, allegations made in the FIR regarding demand of additional dowry and commission of cruelty upon deceased have not been substantiated by material particulars either in the FIR nor in the statement of the first informant recorded under Section 161 Cr.P.C., copy of which is on record at page 47 of the paper book, as such, the same are liable to be ignored by this Court at this

stage, in view of the law laid down by the Apex Court in **Kahkashan Kausar @ Sonam and others Vs. State of Bihar and Others, (2022) 6SCC 599**, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, the learned A.G.A. and the learned counsel representing first informant could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

12. Accordingly, the bail application is **allowed**.

13. Let the **applicant-Badri Prasad Yadav**, be released on bail in the aforesaid case crime number on his 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.

14. 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 :- 6.12.2023**

Vinay