Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49805 of 2023

Applicant :- Basmati Devi
Opposite Party :- State of U.P.
Counsel for Applicant :- Amit Kumar Verma,Awadhesh Kumar Chaudhari
Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Nanhe Lal Tripathi, Advocate holding brief of Sri Awadhesh Kumar Chaudhari, learned counsel for the applicant, Sri Amit Shukla, learned counsel for the first informant, Sri Bade Lal Bind, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Basmati Devi, seeking enlargement on bail during trial in connection with Case Crime No. 189 of 2023, under Sections 498-A, 304B IPC and Section 3/4 D.P. Act, registered at P.S. Jamaniya, District Ghazipur.

4. Learned counsel for the applicant argued that the applicant is the mother-in-law of the deceased Sarita. It is argued that the general and omnibus allegations have been levelled against the applicant. It is argued in the postmortem report a single injury being a ligature mark has been found on the body of the deceased and the doctor has opined the cause of death due to antimortem hanging. It is argued that the marriage of the deceased was solemnized with Sonu Yadav the son of the applicant four years back. Sonu Yadav the husband of the deceased is in jail. The applicant has no criminal history as stated in para 18 of the affidavit and is in jail since 12.08.2023. It is argued that the applicant is a lady and she is entitled to the benefit of Section 437 Cr.P.C.

5. Per contra, learned counsel for the State opposed the prayer for bail and argued that the applicant is named in the First Information Report and there are allegations against her.

6. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is the mother-in-law of the deceased. The cause of death is asphyxia as a result of antimortem hanging. No other bodily injury has been found on the body of the deceased except for a ligature mark. Sonu Yadav the husband of the deceased is in jail.

7. Looking to 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, this Court is of the view that the applicant may be enlarged on bail.

8. Let the applicant **Basmati Devi**, 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 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.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

9. 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 and send the applicant to prison.

10. The bail application is ***allowed***.

Order Date :- 11.12.2023
M. ARIF

(Samit Gopal, J.)

Digitally signed by :-
MOHAMMAD ARIF
High Court of Judicature at Allahabad