

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49949 of 2023

Applicant :- Ravi Prakash Rai

Opposite Party :- State of U.P.

Counsel for Applicant :- Devottam Pandey

Counsel for Opposite Party :- G.A., Shashi Bhushan Kunwar

Hon'ble Rajeev Misra, J.

1. Heard Mr. Devottam Pandey, the learned counsel for applicant, the learned A.G.A. for State and Mr. Shashi Bhushan Kunwar, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Ravi Prakash Rai, seeking his enlargement on bail in Case Crime No. 216 of 2023, under Sections 323, 498-A, 306 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Sukhpura, District-Ballia during the pendency of trial.

4. Record shows that marriage of applicant-Ravi Prakash Rai was solemnized with Lucky Rai on 27.02.2016. However, after expiry of a period of 7 years and 6 months from the date of marriage of applicant, an unfortunate incident occurred on 29.08.2023 in which, the wife of applicant died as she committed suicide by hanging herself.

5. It is the case of applicant that information regarding the aforesaid occurrence was given by the younger brother of the applicant at the concerned Police Station in terms of Section 174 Cr.P.C. On the above information, the inquest (*Panchayatnama*) of the body of deceased was conducted 31.08.2023 itself. In the opinion of the witnesses of inquest (*Panch witnesses*), the nature of the death of deceased was categorized as suicidal and the cause of death of deceased was specified as hanging.

6. After the proceedings of inquest had been undertaken, a delayed FIR dated 30.08.2023 came to be lodged by first informant Dhananjay Rai and was registered as Case Crime No. 216 of 2023, under Sections 323, 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Sukhpura, District-Ballia. In the aforesaid FIR, 3 persons namely (1) Ravi Prakash Rai (husband), (2) Ashutosh Rai @ Vikash Rai (Devar) and (3) Smt. Rajkumari Rai (mother-in-law) of the deceased have been nominated as

named accused.

7. Subsequent to aforementioned FIR, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The post mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, cause of death of the deceased was Asphyxia as a result of ante-mortem hanging. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"Obliquely ligature mark size 27 cm x 1.5 cm around the neck hearness blacking present at situated 2.5 cm below and back from left ear lobule, 6 cm below the chin and 1 cm below and back from Rt. ear labula on subcutaneous dissection parchment like glistening with brasses present Knot ligature mark size 5 cm x 5 cm rt. side of the neck."

8. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have 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 applicant alone is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 06.10.2023 whereby applicant has been charge sheeted under Sections 323, 498-A, 306 IPC and Sections 3/4 Dowry Prohibition Act.

9. Learned counsel for applicant contends that though applicant is the husband of deceased, a named and charge sheeted accused yet he is liable to be enlarged on bail. The deceased was a short tempered lady and she has taken an extreme step of terminating her life by hanging herself. The bona-fide of the applicant is explicit from the fact that except for the ligature mark, no other external ante-mortem injury was found on the body of deceased. It is next contended that prima-facie the death of deceased is a suicidal death. Consequently, the same is covered under Section 306 IPC. An offence under Section 306 IPC is to be considered on a conjoint reading of Section 107 and 306 IPC. However, up to this stage, no such material has emerged on record on the basis of which, it could be inferred that the applicant has abetted, instigated or conspired in the commission of crime in question. There is nothing on record to indicate that deceased committed suicide on account of any immediate act of applicant. Moreover, no instigation have be inferred against application on the basis of his conduct. He further contends that an offence under Section 306 IPC is subject to trial evidence. To buttress his submission, he has relied upon the following judgments of this Court and Supreme

Court in the case of **(i). Sarvesh Vs. State of U.P. 2018 ADJ Online 0163, (ii). Gurcharan Singh Vs. State of Pubjab, (2020) 10 SCC 200, (iii). Kanchan Sharma Vs. State of U.P. and Another 2021 SCC OnLine SC 737, (iv). Mirza Iqbal alias Golu and Another Vs. State of U.P. and Another 2021 SCC OnLine SC 1251, (v) Mariano Anto Bruno and Another Vs. Inspector of Police 2022 SCC OnLine SC 1387, & (vi) Kashibai and Others Vs. State of Karnataka, 2023 SCC OnLine SC 575.** Even otherwise, the allegations made in the FIR with regard to the demand of additional dowry and commission of cruelty upon deceased on account of non-fulfillment of additional demand of dowry are not only false and concocted but also vague and bald allegations inasmuch as, the same are devoid of material particulars. No attempt has been made by the first informant to establish the same in his statement under Section 161 Cr.P.C. either. As such, the same are liable to be ignored by this Court at this stage in view of the law laid down by Apex Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599.**

10. 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 23.09.2023. As such, he has undergone more than 2 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.

11. Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that since applicant is the husband of deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. 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.

12. 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, except

for the ligature mark, no other external ante-mortem injury was found on the body of deceased, an offence under Section 306 IPC has to be considered on a conjoint reading of Sections 107 and 306 IPC, up to this stage, there is nothing on record to infer abetment, instigation or conspiracy against the applicant, there is no such material to show that the deceased committed suicide on account of an immediate act of applicant, no instigation can be inferred from the conduct of the applicant either, an offence under Section 306 IPC is subject to trial evidence, the judgments of the this Court and the Supreme Court referred to above, the allegations made in the FIR with regard to the demand of additional dowry and commission of cruelty upon deceased on account of non-fulfillment of additional demand of dowry are vague and bald allegations inasmuch as, the same are devoid of material particulars, no attempt has been made by the first informant to establish the same in his statement under Section 161 Cr.P.C. either, 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.

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

14. Let the **applicant-Ravi Prakash Rai**, 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.

15. 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 :- 5.12.2023

Vinay