

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50992 of 2023

Applicant :- Urmila Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Kuldeep Singh

Counsel for Opposite Party :- G.A.,Pramod Kumar,Sarvesh Kumar Singh

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50845 of 2023

Applicant :- Nand Lal Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Kuldeep Singh

Counsel for Opposite Party :- G.A.,Pramod Kumar,Sarvesh Kumar Singh

Hon'ble Rajeev Misra,J.

1. Heard Mr. Kuldeep Singh, the learned counsel for applicants-Urmila Devi and Nand Lal Sharma, the learned A.G.A. for State and Mr. Pramod Kumar, the learned counsel representing first informant.

2. Perused the record.

3. These applications for bail have been filed by applicants-**Urmila Devi and Nand Lal Sharma** seeking their enlargement on bail in Case Crime No. 0081 of 2023, under Sections 498A, 304B I.P.C. and 3/4 D.P. Act, Police Station- Pakdi, District- Ballia during the pendency of trial.

4. Record shows that marriage of Sandeep Sharma son of applicants was solemnized with Arti Sharma on 11.03.2023. However, just after expiry of a period of 5 months from the date of marriage of the son of applicants, an unfortunate incident occurred on 17.09.2023 in which the daughter-in-law of the applicant namely Arti Sharma died.

5. In respect of aforesaid incident, a prompt F.I.R. dated 17.09.2023 was lodged by first informant Praveen Sharma (father of the deceased) and was registered as Case Crime No. 0081 of 2023, under Sections 498A, 304B I.P.C. and 3/4 D.P. Act, Police Station- Pakdi, District- Ballia In the aforesaid F.I.R., seven persons namely- Sandeep Sharma, Nand Lal Sharma, Urmila Devi, Nath Narayan, Pradeep, Kushboo, and Amrita Sharma have been nominated as named accused.

6. After above-mentioned F.I.R. 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 17.09.2023 itself. In the opinion of witnesses of inquest (Panch Witnesses) the nature of death of deceased could not be specified. However, the cause of death of deceased was said to be death during treatment. 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 cause of death of deceased is shock and Septicemia. However, no ante-mortem injuries were found on the body of deceased.

7. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the F.I.R. The common thread which runs in the statements of all witnesses examined under Section 161 Cr.P.C. is that the deceased died on account of negligence of the named accused. On the basis of above and other material collected by the Investigating Officer, during course of investigation, he came to the conclusion that complicity of only three named accused i.e. Sandeep Sharma (Husband), Nand Lal Sharma (father-in-law) and Urmila Devi (mother-in-law) of the deceased is established in the crime in question. Accordingly, he submitted the charge-sheet dated 02.10.2023 whereby, aforementioned named accused have been charge sheeted under Sections 498A, 304B I.P.C. and 3/4 D.P. Act.

8. Learned counsel for applicants submit that though applicant-Urmila Devi is the mother-in-law and applicant-Nand Lal Sharma is the father-in-law of the deceased and both are named as well as charge sheeted accused yet they are liable to be enlarged on bail. According to the learned counsel for applicants applicant Urmila Devi is a lady and therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C. It is then contended that as per the medical opinion regarding death of the deceased, it cannot be said that the death of the deceased has

occurred on account of any deliberate act of applicants. As such, the applicants are liable to be enlarged on bail.

9. Even otherwise, applicants are of clean antecedents having no criminal history to their credit except the present one. Applicants are in jail since 18.09.2023. As such, they have undergone more than two 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 applicants stands crystallized. However, upto this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, he submits that applicants are liable to be enlarged on bail. In case, the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicants are named as well as charge sheeted accused, therefore, they do not deserve any indulgence by this Court. The death of the deceased has occurred within 5 months from the date of marriage and at her marital home. Moreover, the death of the deceased is highly unnatural. Since, the death of the deceased has occurred within 7 years of marriage and at her marital home, therefore, the same is a dowry death. Applicants are father-in-law and mother-in-law of the deceased and also an inmate of the house. As such, burden is upon the applicants to explain not only the manner of occurrence but also their innocence in terms of Sections 106 and 113B of the Evidence Act. However, upto this stage the applicants have vehemently failed to discharge the said burden upto this stage. As such, no sympathy be shown by this Court in favour of applicants. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicants in support of the present application for bail 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, complicity of applicant, gravity and nature of offence and accusation made coupled with the fact that applicant Urmila Devi is the mother-in-law of the deceased, as she is a lady and therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., as per the medical opinion, the cause of death of the deceased is shock and Septicemia, there is nothing on record to indicate that the death of

the deceased has occurred on account of any deliberate act of applicants, the clean antecedents of applicants, the period of incarceration undergone, 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 applicants 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 applicants during the pendency of trial, the judgment of the Supreme Court in **Sumit Subhaschandra Gangwal & Anr. Vs. The State of Maharastra & Anr. 2023 Live Law (SC) 373 (paragraph 5)**, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present applications for bail, but without making any comments on the merits of the case, the applicants have made out a case for bail.

12. Accordingly, the bail applications are **Allowed**.

13. Let the applicants-**Urmila Devi and Nand Lal Sharma** be released on bail in aforesaid case crime number on their 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 APPLICANTS 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 APPLICANTS 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 APPLICANTS MISUSE 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 APPLICANTS 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 applicants, shall have serious repercussion on their 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 :- 13.12.2023

Imtiyaz