

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53641 of 2023

Applicant :- Abhay Kumar Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Vishveshwar Mani Tripathi, Vikas Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

1. Heard learned counsel for the applicant as well as the learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, Abhay Kumar Gupta, with a prayer to release him on bail in S.T No. 501/2023, **Case Crime No. 237 of 2023, under Sections 498A, 323, 304-B IPC and Section 3/4 of D.P. Act, Police Station- Rampur Karkhana, District- Deoria**, during pendency of trial.

3. There is allegation against the applicant of causing dowry death of his wife.

4. Learned counsel for the applicant has submitted that it is not a case of dowry death, but it is a case of over powering ambition of the deceased which compelled her to commit suicide. The reasons for her commission of suicide have been discussed in the bail application of co-accused, Ram Niwas, being bail application No. 48737 of 2023 which is quoted hereinbelow:-

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

2. FIR of the present case was lodged against the applicant, his wife and son and according to the FIR, marriage of the son of the applicant was solemnised with the deceased on 01.06.2023 and after marriage applicant and his family members tortured her for a car in dowry and on 02.07.2023 i.e. within one month of her marriage, informant received an information that her daughter i.e. deceased had died.

3. It is submitted by learned counsel for the applicant that due to the non-fulfillment of demand of dowry applicant and her family members committed the murder of the deceased. Learned counsel for the applicant submitted that applicant is father-in-law of the deceased and on the basis of false allegation

of demand of dowry and torture, he has been made accused in the present matter. He further submitted that deceased was connected with orchestra group of one Sushil Kumar Dancer and even after marriage he on his instigation used to make videos and after marriage when son of the applicant i.e. husband of the deceased objected then she became annoyed and within one month of her marriage she committed suicide. He further submitted that it is hard to believe that within one month of her marriage deceased was being tortured for demand of dowry by the applicant and his family members. He further submitted that post mortem report of the deceased also suggests that she died due to hanging. Learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. The applicant is the father-in-law of the deceased. The applicant never demanded dowry or did he torture the deceased. In fact, the applicant never interfered in the domestic life of the deceased and her husband. The applicant is bereaved by the death of his daughter-in-law and prays for peace of the departed soul. The applicant did not abet or instigate the deceased to commit the suicide. The applicant does not have any criminal history apart from the instant case. The applicant is a old aged person, who resides in Deoria with his family. The applicant is not a flight risk. The applicant is a law abiding citizen who has cooperated with the police investigation and shall join the trial proceeding. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending. He lastly submits that the mother-in-law namely Atwari Devi who has been similar role as assigned to the applicant has been enlarged on bail by co-ordinate Bench of this Court dated 26.10.2023 passed in Criminal Misc. Bail Application No. 44853 of 2023, copy of which has been produced before this Court and is taken on record. The applicant is in jail since 04.07.2023.

4. Learned AGA for the State could not satisfactorily dispute the aforesaid submissions from the record. He does not contest the criminal history of the applicant as disclosed in the bail application.

5. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicant has made out a case for bail. Hence the bail application is allowed.

6. Let applicant Ram Niwas involved in Sessions Trial No. 501 of 2023 arising out of Case Crime No. 237 of 2023 under Sections 498A, 304-B, 323 I.P.C., and Section 3/4 of Dowry Prohibition Act, Police Station Rampur Karkhana, District Deoria, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

I. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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

of the Indian Penal Code.

III. In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 of the Indian Penal Code.

IV. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

7. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

8. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted."

5. Learned counsel for applicant has submitted that co-accused, Atwari Devi, has already been enlarged on bail vide bail application no. 44853 of 2023. The case of the applicant is stands on same footing. He is languishing in jail since 04.07.2023.

6. Per contra learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, he does not deserves any indulgence. In case the applicant is released on bail, she will again indulge in similar activities and will misuse the liberty of bail.

7. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of **Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P. (Crl.) No. 5191 of 2021, judgement dated 11.7.2022** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail 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 that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

8. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

9. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 14.12.2023

Abhishek