

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 258 of 2023

Applicant :- Ramsuhawan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Bhanu Dutt Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Bhanu Dutt Dwivedi, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Ramsuhawan** for grant of bail, in Case Crime No.219 of 2022, under Sections 498-A, 304-B I.P.C. and Section 3/4 of the Dowry Prohibition Act, Police Station Katra Bazar, District Gonda, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that F.I.R. of this case has been lodged on the basis of false, concocted and highly improbable allegations. In fact there was no dispute or differences between the applicant and the deceased since her marriage with the applicant and they were living a cordial matrimonial life.

5. It is also submitted on behalf of the applicant that at the time of the incident, the applicant was not at his house and since the deceased was insisting the applicant to take her to Delhi, where he was working, on being refused, she poured kerosene oil on her and set herself ablaze. It is further submitted that the allegations of demand of dowry and committing cruelty in lieu thereof are false, concocted and could not be believed. Attention of this Court has been drawn towards the statement of the parents of the deceased namely Suman Devi and Rangilal, who have been testified before the trial court as P.W.-1 and P.W.-2, while P.W.-1 Suman Devi was intact in her chief examination but she has not supported the version of the prosecution in her cross examination and thereafter she has been declared hostile and also disowned her statement recorded under Section 161 Cr.P.C. while father of the deceased namely Rangilal P.W.-2 has not supported the version of the prosecution in his chief examination and has been declared hostile and has disowned his statement recorded under Section 161 Cr.P.C.

Both these witnesses have stated that the deceased was not subjected to cruelty in lieu of demand of dowry, soon before her death and other witness P.W.-3 Vinay Kumar Giri has also been declared hostile and has not supported the version of the prosecution.

6. It is further submitted that to attract the presumption as provided under Section 1113-B of the Indian Evidence Act, the prosecution is obliged to prove initial facts on the basis of which the presumption as provided under Section 113-B of the Indian Evidence Act may be drawn and in the instant case as parents of the deceased have not proved the fact that soon before her death the deceased was being subjected to cruelty, it may not be presumed that the applicant is an accused of dowry death and thus there is remote possibility of conviction of the applicant before the trial court.

7. It is next submitted that applicant is in jail in this case since 11.07.2022 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

8. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the deceased has been done to death within two years of her marriage with the applicant on the pretext of non fulfilling demand of dowry and therefore, the applicant, who is husband of the deceased, is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

9. Having heard learned counsel for the parties and having perused the record, it is evident that marriage of the deceased was solemnized with the applicant about two years before lodging of the F.I.R. The incident had occurred on 09.07.2022 at about 04:00pm. It is claimed that the applicant (husband) was not present at his house when the extreme step was taken by the deceased. The postmortem of the deceased would reveal that superficial to deep burn injuries have been found all over body of the deceased and cause of death has been ascertained as shock as a result of ante mortem burn injuries. The star witnesses of this crime namely parents of the deceased and other relative of the deceased namely Vinay Kumar Giri have been testified before the trial court as P.W.-1, P.W.-2 and P.W.-3. None of these witnesses have supported the version of the prosecution while P.W.-1 Suman Devi has been declared hostile in cross examination and other witnesses namely Rangilal and Vinay Kumar Giri have been declared hostile in their chief examination. The defence of the applicant appears to be that to

attract the presumption as provided under Section 113-B of the Indian Evidence Act, the prosecution may not be exonerated from proving initial facts. The star witnesses of this crime have failed to prove the initial facts on the basis of which any presumption as provided under Section 113-B of the Indian Evidence Act may be taken. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 11.07.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. Having regard to the overall facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

11. Let the accused/applicant- **Ramsuhawan** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

13. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

14. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 2.11.2023/Anupam S/-