

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 250 of 2023

Applicant :- Ganesh Prasad Jaiswal

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

Counsel for Applicant :- Kalika Prasad Pandey, Ajay Kumar Sonar, Gyan Singh, Kuldeep Kumar Srivastava, Pankaj Verma, Shyam Singh

Counsel for Opposite Party :- G.A., Ravi Shankar Mishra

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Mohd. Asif Khan, learned A.G.A. for the State and perused record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.434 of 2022 under Section 498-A, 306 IPC PS Lalganj, district Pratapgarh.

3. Learned counsel for the applicant has submitted that uncle of deceased lodged FIR mentioning that the deceased was married with the applicant prior to 10 years as per Hindu rituals and after marriage, the inlaws were not happy with dowry and they used to harass the deceased. The FIR further indicates that on the date of incident, the deceased was done to death by the applicant his family members. Learned counsel for the applicant has submitted that the post mortem report indicates that there is only one ligature mark and no internal or external injury was found on the person of deceased and cause of death is hanging. It has been further submitted that marriage had taken place prior to 13 years and prior to present case, no FIR or complaint was lodged either by the deceased or her family members. He has further submitted that two children of deceased namely, Naitik Jaiswal who is 11 years of age and Nitin Jaiswal who is 9 years of age have stated that there was no quarrel between the deceased and the applicant and their father was not present at the relevant time. They have further stated that when they entered into the room of mother and they found that deceased was hanging in room.

4. Learned counsel for the applicant has further invited attention

of this Court towards the Annexure No.7 to the bail application and a detailed and comprehensive statements of neighbourers have been recorded and all of them have said nothing unusual against the applicant. He has further submitted that after going through the entire evidence and FIR, it cannot be inferred that the applicant has played any active act in instigation, rather, there is no evidence which can attribute that the applicant was involved in commission of crime. He has further submitted that only the allegation of dowry demand is levelled which may not be the point of issue after 13 years of marriage and it cannot be said that the applicant has instigated the deceased to commit suicide, therefore, the ingredients of Section 107 IPC is not seen in the present case. He has further submitted that the applicant has no criminal history and he is in Jail since 6.8.2022.

5. On the other hand, learned counsel for the complainant has opposed the bail and submitted that deceased committed suicide because of dowry demand made by inlaws and the applicant. He has further submitted that the deceased committed suicide by hanging in the house of the applicant and it is for the applicant to prove that he did not commit the offence. Learned counsel for the complainant has further submitted that the PW-1 and 2 have been examined by the Trial Court and they have supported the prosecution case.

6. Similarly, learned AGA has opposed the opposed the bail and submitted that it is a death because of dowry demand and the applicant is not liable to be granted bail.

7. Considering over all facts and circumstances of the case, the argument there is no abetment, the argument that the two children of the deceased have not supported the prosecution case, the ingredients of Section 107IPC is not seen in the present case, it is a fit case for bail.

8. Let the applicant, Ganesh Prasad Jaiswal be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with 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 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 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 during trial 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 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.

9. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 8.11.2023
Rajneesh JR-PS)