

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1277 of 2023

Applicant :- Sandeep @ Raj Kumar

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

Counsel for Applicant :- Upendra Kumar Verma

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Upendra Kumar Verma, learned counsel for the accused-applicant as well as Shri Akhilesh Kumar Srivastava, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Sandeep @ Raj Kumar** on bail, who is involved in Case Crime No. 0078 of 2022 under Sections 498-A, 323, 304-B, 504 I.P.C and Section 3/4 Dowry Prohibition Act, Police Station Malhipur, District Shrawasti.

3. Learned counsel for the applicant submitted that the said incident took place on 27.01.2022, and the First Information Report was lodged by the mother of deceased on 03.03.2022, wherein she has mentioned that her daughter was married prior to two years with Sandeep i.e. the applicant and she was being harassed by the applicant and his family members. She further mentioned in the F.I.R, that on 27.01.2022 at about 7 O'Clock, the applicant had abused the deceased, which was opposed by her, thereafter, she was set at fire by the applicant. Learned counsel for applicant submitted that the F.I.R., itself indicates that the medical treatment was given to the deceased and no F.I.R was lodged promptly after the said incident, rather, the F.I.R was lodged after thirty five days i.e. 03.03.2022. He further submitted that at that time, the deceased was alive and she died on 28.04.2022 and no dying declaration was recorded before the Gazetted Officer, rather her statement under Section 161 Cr.P.C has been recorded wherein she has mentioned that she was set at fire by the applicant. Learned counsel for applicant further submitted that it is very strange to believe that for a such a long time, no dying declaration of the deceased was recorded before any Gazetted Officer or any Independent body, rather her statement under Section 161 Cr.P.C was recorded by the Police, which is not admissible in law. He further submitted that the circumstances of the entire case indicates that the incident took place on 27.01.2022, the deceased was brought by the complainant to her house where she was undergoing medical

treatment, the First Information Report was lodged on 03.03.2022 and the deceased died on 28.04.2022 in the house of complainant.

4. Learned counsel for the applicant further drawn attention of the Court towards the statement of independent witnesses namely Daddan Prasad Mishra, Ramesh Kumar, Dhaniram Yadav and Omkar Gupta, and all of them have stated that the deceased was suffering from fits (epilepsy) and the applicant was looking after her and on the date of occurrence, she had immolated herself by setting fire while the applicant and his family members were away from the house and on the call of the witnesses, the applicant and his father came to the place of occurrence. He further submitted that the deceased was inherited 7.5 Bigha of agricultural property in her name by her father and the complainant got a registered deed in her favour in which it is mentioned that in case, the deceased dies, the property would go in favour of the complainant. He further submitted that the intention of the complainant is very clear that she wanted to grab the property of deceased that is why she did not provide proper medical treatment to the deceased due to which she died in the house of the complainant. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 16.04.2022.

5. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that the in the statement of deceased recorded under Section 161 Cr.P.C, she has stated that the her husband/applicant had set her at fire due to which she received injuries. Learned A.G.A for the State further submitted that the prosecution case is supported by the statement of sister and mother of the deceased, therefore, bail is liable to be rejected.

6. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that the First Information Report is highly belated, the argument that the deceased died in the house of complainant (mother of deceased), the argument that independent witnesses namely Daddan Prasad Mishra, Ramesh Kumar, Dhaniram Yadav and Omkar Gupta have not supported the prosecution case and have stated that the applicant was away from the house when the said incident took place, I find it to be a fit case for grant of bail.

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

8. Let the applicant **Sandeep @ Raj Kumar** 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 her 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 :- 22.11.2023
DiVYa/Rajneesh