

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2490 of 2023

Applicant :- Kamlesh Yadav

Opposite Party :- State Of U.P. Thru. Addil. Chief Secy. Home

Counsel for Applicant :- Indra Pratap Singh

Counsel for Opposite Party :- G.A.,Arpan Prakash
Srivastava,Mohak Srivastava

Hon'ble Brij Raj Singh,J.

1. None appears on behalf of the complainant to press the present bail application.
2. Heard Sri Indira Pal Singh learned counsel for the applicant and Mohd. Ashif Khan, learned A.G.A.-I for the State.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 340 of 2022 under section 306 IPC, Police Station Mallawan District Hardoi.
4. It has been submitted by learned counsel for the applicant that as per FIR incident took place on 12.04.2022 but admittedly, no FIR was lodged promptly. However, an application under section 156(3) Cr.P.C. was moved by the brother of the deceased on 07.06.2022 and in pursuance of direction issued by the court, FIR was lodged on 10.08.2022. It has been submitted by learned counsel for the applicant that admittedly, the marriage of the applicant had taken place with the deceased prior to 18 years and there is no FIR of dowry demand or any kind of harassment ever lodged by the deceased or her family members and to support his submission he has mentioned the fact in para-18 of the affidavit filed in support of the bail application that the applicant has no previous criminal history and in reply thereto the State has mentioned in the counter affidavit that it is not disputed that there is any case pending against the applicant except the present one. It has been submitted by learned counsel for the applicant that there was some altercation between the applicant and his late wife which is admitted in the statement of three children that the deceased committed suicide by consuming Aluminum Phosphide.
5. Learned counsel for the applicant has invited attention of this Court towards the statement of Anshu 17 years old son of the deceased, who has stated that his mother had gone for harvesting the wheat crop on which his father was annoyed and some altercation took place between his father (applicant) and his mother thereafter his father had gone out of house and at about 04.00 p.m. he heard the sound in the room of his mother and saw that his mother received injuries on her face and she consumed insecticides. Similar statements of Anuska 15 years old daughter and Mayank 09 years old son of deceased have also been recorded. They have also stated the same facts as stated by Anshu son of the deceased.

6. Learned counsel for the applicant has submitted that two injuries are simple in nature and it appears that it has been received for the reason that deceased fell down on the ground which is admitted in the statement of the children of the deceased, who were present in the house. Learned counsel for the applicant has submitted that there is no active act of the instigation in any manner by the applicant rather it was an altercation between the two which is natural between the wife and husband and if the deceased committed suicide, it cannot be said that the applicant was involved in abetting the crime and the ingredients of section 107 IPC is not found. Learned counsel for the applicant has submitted that there is longstanding relation between the applicant and the deceased and for 18 years they remained as husband and wife and it is unfortunate incident. The applicant has no previous criminal history and there is no possibility of fleeing away from the judicial process or tempering with the witnesses and in case, the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 18.12.2022.

7. On the other hand, Mohd. Ashif Khan, learned Additional Government Advocate has opposed the prayer for bail.

8. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that the FIR has been lodged at the belated stage, argument that in the statement of three witnesses, who are children of the deceased nothing adverse has come against the applicant rather they have stated that deceased committed suicide by consuming poison and the applicant was not present at the place of occurrence, therefore, I am of the opinion that the applicant is entitled to be released on bail.

9. Let the applicant, namely, **Kamlesh Yadav**, 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.

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 :- 11.12.2023

dk/