

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3720 of 2023

Applicant :- Rajjab Ali

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

Counsel for Applicant :- Ramakar Shukla, Smt. Nalini Prakash Jain

Counsel for Opposite Party :- G.A., Mohammad Riyaz, Mohd Riyaz

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Vipul Kumar Singh, learned Brief Holder, holding brief of Sri Rajesh Kumar Singh, learned A.G.A.-I for the State and perused record. Learned counsel for the complainant Sri Mohd. Riyaz is not present.

Rejoinder affidavit filed today is taken on record.

2. The present bail application has been filed by the applicant for bail in Case Crime No.361 of 2022 under Section 498-A, 302, 120-B IPC, PS Lambhua, district Sultanpur.

3. Learned counsel for the applicant has submitted that the maternal uncle of deceased lodged FIR and he has mentioned that the applicant and other co-accused used to harass deceased, therefore, she committed suicide. It has been submitted that the statement of the complainant was recorded on 8.12.2022 in which he has levelled allegation that the applicant being husband made conspiracy, though, he was present in Maharashtra at the time of incident. It has been further submitted that no incriminating and clinching evidence was given by the complainant maternal uncle of deceased and only on the basis of surmises and conjecture, the applicant has been implicated. However, the statement of the PW-1 complainant was recorded before Court below and though, in examination-in-chief, he has supported the prosecution case in the cross examination, it is evident that he has become hostile. The statement of PW-1 has been filed along with rejoinder affidavit filed today as Annexure No.RA-1. In the cross examination, he has deposed before the Court that the applicant did not harass the deceased and the mental condition of deceased was not in good position. He has further deposed before the Court that the applicant was residing in Mumbai at the relevant time and after

getting death information, he came to the house. He has further deposed that mother of deceased never told that deceased was ever harassed by the family members and whenever he used to visit the house of deceased, she always used to tell him that she was living happily in Sasural (inlaws house). He has further deposed that at the behest of others, he lodged FIR.

4. Learned counsel for the applicant has further invited attention of this Court towards the application dated 5.8.2023 for discharge filed as Annexure No.RA-2 to the rejoinder affidavit which has been filed before the Trial Court. The said application indicates that it has been filed for discharge of witnesses Arif and Kallu Ali for the reason that they were not supporting the prosecution case, therefore, the said witnesses may be discharged. Learned counsel for the applicant has further submitted that after looking to the statement of PW-1 at the moment, it cannot be inferred that the applicant was involved in commission of crime. Learned counsel for the applicant has further submitted that there is no incriminating and clinching evidence on record which may indicate that the applicant was involved in hatching conspiracy against the deceased. Learned counsel for the applicant has further submitted that the applicant has no criminal history and he is in Jail since 15.12.2022.

5. Learned A.G.A. opposed the bail but could not dispute the facts that in cross-examination PW-1 has not supported the prosecution case and the applicant has been moved for discharge of other witnesses as they are not supporting the prosecution case.

6. Considering over all facts and circumstances of the case, the in cross-examination the PW-1 has not supported the prosecution case and the applicant has been moved for discharge of other witnesses as they are not supporting the prosecution case, it is a fit case for bail.

7. Let the applicant, Rajjab Ali 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.

8. 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 :- 12.10.2023
Rajneesh JR-PS)