

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4808 of 2023

Applicant :- Shiv Sagar

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

Counsel for Applicant :- O.P. Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri O.P. Tiwari, 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- **Shiv Sagar** for grant of bail, in Case Crime No. 125 of 2022, under Sections 498-A, 304-B, 323, 506 IPC and 3/4 Dowry Prohibition Act, Police Station Bihar, District Unnao, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report has been lodged by the brother of the deceased on 11.5.2022, it is stated that the deceased was being treated with cruelty in lieu of demand of Rs. 2,00,000/- and Rs. 60,000/- were even given by the family members of the deceased to the applicant but the applicant and his family members were not satisfied and the deceased was done to death by the applicant and his family members on 10.5.2022 due to nonfulfillment of demand of dowry.

4. Highlighting above facts, it is submitted that the applicant is the husband of the deceased who had died by consuming poison, a little after 3 years of her marriage with the applicant, however, in these 3 years wherein the deceased had resided with the applicant, no complaint of any kind has been made to any public Authority with regard to the demand of dowry and committing cruelty in lieu thereof and these allegations have been carved out subsequently.

5. Attention of this Court has also been drawn on the inquest report which has been drawn on the information given by the mother of the deceased on 10.5.2022 at 6.30 A.M. and it is submitted that no allegation with regard to demand of dowry or

committing cruelty has been alleged in this information and only an suspicion has been shown to the effect that the deceased had died in suspicious circumstances and on the next day, the FIR has been lodged by the brother of the deceased stating therein that deceased was being subjected to cruelty in lieu of demand of dowry and all the allegations of demand of dowry have been carved out in order to harass the applicant.

6. It is further submitted that the real story is to the tune that having regard to the differences, the applicant had consumed poison and was being treated in District Hospital, Unnao.

7. The attention of this Court has been drawn towards a out patient prescription of the District Hospital Unnao placed at page no. 32 of the paper book wherein complaint of stomach ache and vomiting and history of poisoning (one day before) has been shown and some treatment also appears to have been given to the applicant and it is submitted that the deceased feeling guilty by the attempt of suicide made by the applicant has also consumed some poisonous substance, as it is evident from the forensic report, wherein *Aluminium Phosphide* has been found in the viscera of the deceased.

8. It is also submitted that the applicant is in jail in this case since 25.11.2022 and having regard to the pace with which the case is travelling before the Trial Court, the same is not expected to conclude in near future. The applicant is not having any criminal antecedent. Charge sheet in this case has already been filed and there is not apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

9. Learned A.G.A. on the other hand submitted that the applicant is accused of committing an heinous offence and he is the husband of the deceased and was more responsible for her security and therefore he is not entitled to be released on bail. It is further submitted that the prescription placed at page no.32 of the paper book with regard to the applicant has been procured in order to carve out a defence.

10. Having heard learned counsel for the parties and having perused the record, it is reflected from the postmortem report that the cause of death of the deceased could not be ascertained though a contusion has been found on the face of the deceased and her viscera was preserved and in the Forensic Report *Aluminium Phosphide* has been found therein. Thus death of the deceased appears to have been caused by consummation of poison. Attention of this Court has been drawn towards page no. 32 of the paper book where on, an out patient prescription

of date 10.5.2022 has been placed, in order to show that on 09.05.2022, having regard to some differences, the applicant had consumed poison and was treated at District Hospital, Unnao and the deceased (wife of the applicant) had also consumed poison on 10.5.2022. It is also shown that the first information of the incident has been given by the mother of the deceased in the early morning of 10.5.2022 and it is on that basis, the inquest of the deceased was drawn wherein no allegation of any kind has been levelled against the applicant or any other person. This submission find corroboration from the inquest report, a copy of which has been placed at page no. 34 of the paper book. It is also a defence of the applicant that it is only due to some differences, the applicant had attempted to commit suicide, however, he could not succeed and the deceased could not be saved as the applicant was himself ill. Applicant is in jail in this case since 25.11.2022 and he is not having any criminal antecedent. Charge sheet in this case has already been filed. His presence may be secured before the trial court by placing adequate conditions.

11. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

12. Let the applicant- **Shiv Sagar** involved in the aforesaid case be released on bail on 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 remain present before the trial court on each and every date of listing of the case before the trial court and shall file an undertaking before the trial court, that he will not seek any adjournment especially when the prosecution witnesses would be in attendance and the violation of this condition alone (seeking adjournment on the dates on which the prosecution witnesses are in attendance), would be a sufficient ground for the Trial Court to cancel the facility of bail granted by this Court.

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

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

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

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

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

15. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 28.11.2023

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