

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6101 of 2022

Applicant :- Durgesh S/O Phoolchandra

Opposite Party :- State of U.P.

Counsel for Applicant :- Smriti,Om Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Om Prakash Singh, learned counsel for the applicant, Shri Mukesh Singh, learned AGA for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.422 of 2021, under Sections 498-A, 304-B I.P.C., and Section 3/4 D.P. Act, Police Station Harpalpur, District Hardoi.

3. It is contended by learned counsel for the applicant that brother of the deceased lodged report making allegation that his sister was married with the applicant on 19.5.2020 and he got information on 30.10.2021 that his sister committed suicide by hanging. He mentioned that applicant and his family members used to demand gold chain and motorcycle as additional dowry. Learned counsel submitted that deceased committed suicide because she was very obstinate and the said fact has been admitted in the statement of her Phupha and Jagdish under Section 161 Cr.P.C. They have deposed that the applicant had come to his house in an intoxicated state and he was beaten by the deceased. Thereafter, the applicant left the house and deceased committed suicide. The same fact is recorded in the statement of elder brother-in-law of the deceased in which it is mentioned that the applicant is a drinker and there was no cordial relation between the applicant and deceased.

4. Learned counsel submitted that deceased committed suicide by hanging and there is one ligature mark which was caused due to hanging. It has been further explained that there is injury of 2 cm x 1.5 cm present on the right hand of middle finger but post mortem report indicates that the said injury is old scratch. He has submitted that the said injury is not caused at the time when deceased committed suicide. It has been submitted that the applicant is in jail for the last more than two years and after looking into the statement of relative of the deceased it cannot be inferred that applicant was involved in commission of crime.

5. Learned AGA opposed the prayer for bail and submitted that the applicant being husband was involved in committing the crime because there is allegation of additional dowry demand and deceased committed suicide due to pressure of dowry demand thus, it is not a fit case for bail.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and considering the argument that applicant is languishing in jail for the last more than two years; argument that deceased committed suicide by hanging and there is only one ligature mark which was caused due to

hanging and other injury is old scratch which was not caused at the time of death; argument that relative of the deceased have not supported the prosecution case fully; I am of the view that the applicant is entitled to be released on bail.

7. Let the applicant, **Durgesh**, 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 :- 29.11.2023

Pks