

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7856 of 2022

Applicant :- Salman S/O Late Mohd. Shameem

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

Counsel for Applicant :- Shivam Sharma

Counsel for Opposite Party :- G.A., Ram Singh

Hon'ble Brij Raj Singh, J.

1. Notice has been served upon opposite party no. 2, but none is present before the Court on his behalf.

2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been filed seeking release of the accused/applicant **Salman S/O Late Mohd. Shameem** on bail, who is involved in Case Crime No. 211 of 2021 under Sections 498-A, 304-B, 201 I.P.C and 3/4 Dowry Prohibition Act, Police Station Jahangirabad, District Ambedkar Nagar.

4. Learned counsel for the applicant submitted that the statement of fact witnesses, the brother, complainant, the mother and the real sister of the deceased have been recorded before the trial Court and they have not supported the prosecution case. Learned counsel for applicant has drawn attention of the Court towards the statement of P.W.-1, Mohd. Usman, brother of deceased and in his cross-examination he has deposed before the Court that he had lodged the F.I.R. at the behest of the villagers and the police did not ask anything regarding the incident. He further deposed that the application for F.I.R was not written by his hand, the same was not read to him by the writer. He further admitted before the Court that his sister did not want to live with the applicant and he also admitted that no dowry was demanded by the in-laws' of the applicant. He further deposed that no F.I.R for harassment or dowry demand was ever lodged by him and he has denied the entire prosecution case as set up by him while lodging the F.I.R and while recording statement under Section 161 Cr.P.C. Learned counsel for applicant has further invited attention of the Court towards the statements of P.W.-2 Alimun, mother of deceased and P.W.-3, Rabia, real sister of deceased and both of them have been declared hostile and they have not supported the prosecution case.

5. Considering the statements of P.W.-1 to P.W.-3, the family members of deceased, at the moment, it cannot be

inferred that the applicant was involved in commission of crime. He further submitted that there is no likelihood of the trial being concluded in near future, and the fact that applicant is languishing in jail since 14.10.2021 and also there is no criminal history of the applicant thus, the applicant is entitled to be released on bail.

6. Learned A.G.A. has opposed the prayer for grant of bail but he could not dispute the fact that P.W.-1, the brother of deceased has not supported the prosecution case and P.W.-2 & 3 have been declared hostile.

7. Considering the facts and circumstances of the case, by perusing the record, considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that P.W.-1, the brother of deceased has not supported the prosecution case and P.W.-2 & 3 have been declared hostile and they have not supported the prosecution case, I find it to be a fit case for grant of bail.

8. Accordingly, the bail application is allowed.

9. Let the applicant **Salman S/O Late Mohd. Shameem** 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.

10. 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 :- 13.10.2023

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