

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 7955 of 2022

**Applicant :-** Kali Shankar S/O Sri Bhairam (Second Bail)

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

**Counsel for Applicant :-** Neelu Singh Chauhan, Dinesh Kumar, Suresh Kumar Yadav

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh, J.**

1. This is the second bail application. The first bail application was rejected for want of prosecution.

2. Supplementary affidavit filed by learned counsel for applicant is taken on record.

3. Heard Shri Dinesh Kumar, learned counsel for the accused-applicant as well as Shri Ravish Chandra Mishra, learned A.G.A. for the State and perused the record.

4. This bail application has been filed seeking release of the accused/applicant **Kali Shankar S/O Sri Bhairam** on bail, who is involved in Case Crime No. 481 of 2018 under Sections 498A, 304B, 307 I.P.C & 3/4 D.P. Act, Police Station Bihar, District Unnao.

5. Learned counsel for the applicant submitted that as per the First Information Report, general allegation of dowry demand (Fifty Thousand Rupees and a motorcycle) has been levelled against the applicant and his family members. He submitted that the deceased committed suicide by immolating herself. The statements of the mother (P.W.-1) and father (P.W.-2) of the deceased have been recorded before the trial Court, wherein both of them have not supported the prosecution case. The mother of the deceased (P.W.-1) namely Bitaan Devi, in her cross-examination, has deposed before the Court that her daughter was medically treated in District Hospital Raebareli and she did not gain consciousness till her death. She further deposed that it was a love marriage of her daughter with the applicant and there was no dowry demand by the in-laws of the deceased. She further deposed that her daughter died while cooking food. She also deposed that she did not give any statement to the police and her statement, at the first instance, was recorded before the trial Court, as per the direction given by her advocate, who had told her that if she would not give statement against the applicant, she would be sent to jail. The statement of the father of the deceased (P.W.-2) namely Ganga Prasad, has been recorded, wherein he has not supported the prosecution case either in the

examination-in-chief or in the cross-examination.

6. Learned counsel for applicant lastly submits that the applicant has already undergone approx five years of imprisonment and as there appears no chances of early conclusion of trial, the applicant may also be enlarged by this Court sympathetically on bail, on the ground of delay in trial, in view of dictum of Hon'ble Supreme Court. Learned counsel for the applicant further stated that there is no previous criminal history of the applicant and he is languishing in jail since 13.12.2018.

7. Learned counsel for the applicant has further relied on the judgment of the Hon'ble Apex Court in the case of Union of India vs. K.A. Najeeb reported in AIR 2021 Supreme Court 712. Para 16 of the judgment is being reproduced herein below:-

*"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."*

8. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that the deceased, in her statement recorded under Section 161 Cr.P.C, has levelled allegation that the applicant along with his family members poured petrol on her and set her at fire. Learned A.G.A submitted that it is a case of dowry death, therefore, bail of the applicant is liable to be rejected.

9. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that both P.W.-1, mother of deceased and P.W.-2, father of deceased have not supported the prosecution case, the argument that the applicant has already underdone five years imprisonment, considering period of incarceration of 5 years supported by the judgment of K.A Najeeb (supra), I find it to be a fit case for grant of bail.

10. Accordingly, the bail application is **allowed**.

11. Let the applicant **Kali Shankar S/O Sri Bhairam** 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.

12. 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 :- 17.11.2023**  
DiVYa/Rajneesh