

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7404 of 2023

Applicant :- Mayaram @ Mayaram Yadav

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

Counsel for Applicant :- Rajesh Chandra Mishra, Dr. Pooja Singh, Shyam Mohan Pradhan

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Dr. Pooja Singh, learned counsel for the applicant, Sri Vishwas Sarashwat, learned A.G.A. for the State and perused record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.326 of 2022 under Section 498-A, 304-B, 316 IPC and Section 3/4 of D.P. Act, PS Khargupur, district Gonda.

3. Learned counsel for the applicant has submitted that FIR has been lodged by the father of deceased, making allegation that he married his daughter to the applicant prior to 6 years. He further levelled allegation that his daughter was harassed by the family members for dowry demand. He has further mentioned that the deceased was married in 2014. However, Gauna ceremony was done in 2018. The FIR further indicates that the deceased was done to death by the applicant and his family members. learned counsel for the applicant has submitted that deceased committed suicide and there is no internal and external injury found non the person of the deceased and there is only one ligature mark and she had died due to anti mortem hanging. It has been submitted by the learned counsel for the applicant that marriage of deceased was performed on 28.5.2013 and a marriage card has been annexed as Annexure No.4 to the bail application to substantiate the argument.

4. Dr. Pooja Singh has invited attention of this Court towards the statement of father contained in Annexure No.9 to the bail application in which he has admitted that his daughter was married on 12.5.2013. Similarly, in the statement of Smt. Phoolvati mother, it is stated that her daughter was married in the year 2014.

5. Learned counsel for the applicant has stated that after looking into the statements of the mother, father of deceased as well as marriage card, it is evident that marriage took place in 2013 and incident took place on 3.11.2022 and 9 years has passed, therefore, Section 304-B IPC is not attracted in the present case. She has relied upon Section 304-B (1) IPC which is quoted below:-

"(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within

seven years of her marriage and it is shown that soon before her death. she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "Dowry death", and such husband or relative shall be deemed to have caused her death."

6. She has submitted that Section 304-B (1) IPC indicates that if the death of a woman is caused by any burn or bodily injury or occurs otherwise than under normal circumstances within seven years of marriage and that soon before her death, she was subjected to cruelty or harassment by her husband or family members or relative, then the same will come within the purview of the dowry death. She has submitted that more than nine years have passed from the date of marriage and the date of Gauna is not the date which can be reckoned for Section 304-B IPC. Date of marriage will be reckoned for calculation of 7 years under Section 304-B IPC. She has further submitted that general allegation of dowry demand is levelled. There is no direct and clinching evidence which may indicate that the applicant was involved in commission of crime, rather, it is a case of suicide.

7. Learned counsel for the applicant has further submitted that the father of deceased had taken money and on asking by the deceased money was not returned, then hot discussions took place between her and her father; due to the aforesaid reason, she committed suicide. She has further submitted that the applicant has no other criminal history and he is in jail since 21.1.2023.

8. Learned A.G.A. opposed the prayer for bail but could not dispute the fact that marriage of the applicant was performed in 2013 rather, the said fact has been admitted in para-20 of the counter affidavit that marriage was performed in 2013. However, Gauna ceremony was performed in 2018, therefore, the year has been reckoned from the date of Gauna that is why, 7 years has been presumed.

9. Considering over all facts and circumstances of the case, the argument that case is not coming within the purview of Section 304-B IPC because marriage has taken place prior to 9 years, the argument that deceased committed suicide, the argument that general allegation of dowry demand has been levelled, the argument that there is no internal and external injury found on the person of the deceased, it is a fit case for bail.

10. Let the applicant, Mayaram @ Mayaram Yadav 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.

11. 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 :- 1.11.2023
Rajneesh JR-PS)