

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2899 of 2021

Applicant :- Rohit Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Prakash Dwivedi, Khusboo Sharma, Mohammad Suhel Siddiqui, Neeraj Singh, Rajesh Kumar Srivastava, Shyama Kant Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Neeraj Singh, 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- **Rohit Kumar** for grant of bail, in Case Crime No. 134 of 2020, under Sections 498-A, 323, 306 I.P.C. and Section 3/4 D.P. Act, Police Station Barasagvar, 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 of this case has been lodged by the father of the deceased on 20.09.2020 at Police Station Barasagvar, District Unnao stating therein that about eight years before the lodging of the first information report deceased (his daughter) was married to the applicant, however, he and his family members used to commit cruelty with her in lieu of demand of Rs. 1 lac as dowry and on 18.09.2020 they all have put his daughter on fire whereby she had sustained grievous burn injuries.

4. Learned counsel for the applicant has drawn the attention of this Court towards the postmortem report of the deceased in order to show that apart from superficial to deep burn injuries, no other injury has been found on the person of the deceased and her death had occurred due to 'shock and septicemia', as a result of 'antemortem burn injuries'.

5. It is also submitted that during life time of the deceased her statement has been recorded by the investigating officer wherein she has described the whole incident in detail and if her statement is believed as it is, it would emerge that on a trivial

issue a fight had occurred between the husband and wife and annoyed by the same the wife committed suicide by putting herself on fire.

6. It is vehemently submitted that it was the applicant who had first called the 'ambulance' and had taken the deceased to the hospital and during her lifetime (admission in hospital) he had done all which was necessary to save her life, but unfortunately the deceased could not be saved.

7. It is also submitted that the record of the hospital, extract of which, has also been brought on record, which fortifies that it was the applicant who had admitted the deceased in the hospital and there is no allegation in the statement of the deceased with regard to the demand of dowry or committing cruelty in lieu thereof and these allegations have been carved out subsequently.

8. It is next submitted that applicant is languishing in jail in this case since 06.12.2020 and he is not having any criminal history and keeping in view the duration of the detention of the applicant, the applicant is entitled to be released on bail and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, he is not entitled to be released on bail.

10. Perusal of the record would reveal that during the course of investigation the statement of the deceased was recorded by the investigating officer, as the said statement is pertaining to the cause of death of the deceased. Thus, by virtue of Section 32 of the Indian Evidence Act, the same would be termed as 'dying declaration' and the deceased in her dying declaration has categorically stated that she was assaulted by the husband on account of the fact that some meat was left in the courtyard and the main gate of the house could not be closed and a dog appears to have consumed the same and on this issue the husband started assaulting her and annoyed by the same she committed suicide by putting herself on fire. The record including the counter affidavit filed by the State, would not reveal that any injury other than the burn injuries were sustained by the deceased. To constitute an offence under Section 306 I.P.C. the 'abetment' must be of the magnitude, as defined under Section 107 of the Indian Penal Code. Thus, having regard to all the facts and circumstances of the case and

also keeping an eye on the period of detention of the applicant since 06.12.2020, in the considered opinion of this Court, the facility of bail may be extended to the applicant. Applicant is not having any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

11. It is to be recalled that the procedure itself may not be permitted to act as punishment and the same could only be inflicted after conviction by the trial Court. Thus, for the reasons mentioned herein-above, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

12. Let the accused/applicant- **Rohit Kumar** involved in above-mentioned case, be released on bail on his 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 not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

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

(iii) 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 by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 18.10.2023

Praveen