

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7661 of 2023

Applicant :- Rahish Khan @ Sahish

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

Counsel for Applicant :- Gyanendra Pathak, Adarsh Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard Shri Gyanendra Pathak, learned counsel for the applicant, Shri Vishwas Saraswat, learned AGA for the State and perused the record.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.64 of 2023, under Sections 498-A, 304-B I.P.C. and Section 3/4 D.P. Act, P.S.- Rupaideeha, District Bahraich.
4. It is contended by learned counsel for the applicant that PW1 father and PW2 mother of the deceased have been examined before the court below and both have been declared hostile. Learned counsel submitted that PW1 father has deposed before the court that his daughter was having illness of fits and she was given treatment but she could not recover. After marriage, her in-laws were providing treatment but due to prolonged illness she was in depression. She had earlier tried to commit suicide but she could not do the same because she was saved by the family. He deposed that no additional dowry was ever demanded by the applicant or by his family and he has not given any statement to the police.
5. Learned counsel submitted that the same version is reiterated by PW2 mother of the deceased and she has also been declared hostile. Learned counsel submitted that father, mother of the deceased who were the fact witnesses having become hostile and have not supported the prosecution case, therefore, at this moment it cannot be inferred in any manner that the applicant is involved in the commission of crime. The applicant has no criminal history. The applicant is in jail since 15.03.2023.
6. Learned AGA opposed the prayer for bail and could not dispute the fact that PW1 father and PW2 mother of the deceased did not support the prosecution case and have

become hostile.

7. Considering the overall facts and circumstances of the case, considering the fact that both fact witnesses, PW1 father and PW2 mother of the deceased have become hostile and looking to the general allegation of dowry demand, I am of the opinion that the applicant is entitled to be released on bail.

8. Let the applicant, **Rahish Khan @ Sahish**, 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.

9. 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 :- 8.11.2023

Pks