

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9139 of 2022

Applicant :- Vijay Sahu

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

Counsel for Applicant :- Mohd.Mateen,Abhishek Dwivedi,Deepak Kumar Pandey,Dinesh Kr. Chaudhary,Salil Tripathi,Shailendra Kumar Tiwari,Shamsher Yadav Jagrana

Counsel for Opposite Party :- G.A.,Amit Kumar Singh,Nawab Ahmad Khan,Prabhat Kumar Upadhyay

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Dinesh Kumar Chaudhary, learned counsel for the accused-applicant; learned A.G.A. for the State as well as Ms. Pragya Pandey, Advocate holding brief for Shri Prabhat Kumar Upadhyay, learned counsel for the informant/ complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Vijay Sahu** for grant of bail, in Case Crime No.05/2022, under Sections 498-A, 304-B I.P.C. & 3/4 D.P. Act, Police Station- Kotwali Jarwa, District- Balrampur, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that the allegations as levelled in the first information report lodged by the father of the deceased are to the tune that after four years of her marriage with the applicant, the deceased has died on 13.01.2022, information of which has been given by the applicant to the informant and the body was cremated. However, after cremation, his other daughter, namely, Poonam, who is married in the same village, informed that the deceased was being subjected to cruelty in lieu of demand of dowry and on non-fulfillment of the demand of dowry, she has been done to death and after getting this information, the first information report was lodged.

5. Highlighting the above facts, it is vehemently submitted that admittedly the deceased had died on 13.01.2022 and as it

appears to be admitted to the informant that the cremation has been done in his presence, however, subsequently on information allegedly given to him by his another daughter, namely, Poonam, he has lodged the first information report.

6. It is vehemently submitted that on 14.01.2022, a compromise was executed between the applicant and the informant wherein certain conditions were laid down for compliance of the parties and in that compromise, there was no mention of any demand of dowry or committing cruelty with the deceased in lieu thereof and the same has been carved out subsequently.

7. It is further submitted that the story as cooked up by the informant could not be believed. Had the deceased been subjected to cruelty in lieu of demand of dowry and her sister is living in the same village, there appears no reason as to why the first information report has been lodged with such a delay and that too after cremation and dead body of the deceased was dug up and thereafter, the inquest report and post mortem was performed and this prima facie reflects that it is only on account of certain terms and conditions not complied by the informant's family, on the basis of which the first information report has been lodged.

8. It is also submitted that the deceased was pressurising the applicant to part some of his property in the name of their sons and when this was not complied, she appears to have become annoyed and committed suicide and is evident from the post mortem report wherein a ligature mark has been found around the neck of the deceased and the cause of death has been ascertained as asphyxia due to ante mortem hanging.

9. It is next submitted that applicant is in jail in this case since 08.02.2022 and four prosecution witnesses have been testified so far and thus, there may not be any apprehension that after being released on bail, the applicant may influence the prosecution witnesses.

10. It is also submitted that having regard to the pace with which the trial is going on before the trial Court, the same is not expected to conclude in near future. The applicant is not having any criminal history and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

11. 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 having regard to the material/evidence available against the applicant, he is not entitled to be released

on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

12. Ms. Pragya Pandey, Advocate holding brief for Shri Prabhat Kumar Upadhyay, learned counsel for the informant/complainant vehemently opposes the prayer of bail of the applicant on the ground that the applicant is the husband of the deceased and he was more responsible for her welfare and therefore, could not be exonerated, more so, when four prosecution witnesses have been testified and have supported the version of the prosecution.

13. Perusal of the record would reveal that it is since 08.02.2022, the applicant is in jail in this case. Only a ligature mark has been found around the neck of the deceased and apart from that, no other injury has found on her person. The cause of death has been ascertained as asphyxia due to ante mortem hanging. Claims and counter claims have been leveled with regard to the death of the deceased as it is highlighted by learned counsel for the applicant that the deceased has committed suicide as she was annoyed from the applicant as he did not part any of his property to his sons. The claim of the prosecution is that it is due to non-fulfillment of demand, the deceased had been done to death or ahs committed suicide.

14. Be that as it may, the star prosecution witnesses of this case appears to have been examined before the trial Court. It appears to be an admitted case that no injury apart from a ligature mark has been found on the person of the deceased. It is also an admitted case that after the death of the deceased, her body was cremated (buried) and thereafter, on an application given by the informant, the same was dug up and inquest and post mortem was performed. There is delay in lodging of the F.I.R. Having regard to the above facts and also keeping an eye that the applicant would not be in a position to influence the prosecution witnesses, a case for bail is made out in his favor, more so, when he is not having any criminal history and detained in prison in this case since 08.02.2022. The presence of the applicant could be secured before the trial court by placing adequate conditions.

15. Having regard to the overall facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

16. Let the accused/applicant- **Vijay Sahu** 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.

17. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

18. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

19. 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 of this Court on the merits of the case.

Order Date :- 19.10.2023

Gurpreet Singh