

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9462 of 2023

Applicant :- Laley @ Lal Babu

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

Counsel for Applicant :- Salil Mohan

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. This is the fourth bail application moved on behalf of the applicant as his earlier three bail applications have been rejected by a co-ordinate Bench of this Court, however, the Hon'ble Judge, who had rejected the earlier bail applications of the applicant has now been transferred to some other High Court and it is in this background, the aforesaid bail application has been placed before this Court.

2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Laley @ Lal Babu** for grant of bail, in Case Crime No. 169/2020, under Sections 498-A, 304-B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station- Kotwali Dehat, District- Balrampur, during trial.

4. 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.

5. It is further submitted that the applicant is the father-in-law of the deceased, whose marriage was solemnized with the son of the applicant on 22.04.2018. However, since the marriage of the deceased with the son of the applicant, the applicant was living separately and was not having concern with their affairs.

6. It is further submitted that in the first information report as well as in the statement of the prosecution witnesses recorded before the Investigating Officer under Section 161 Cr.P.C as well as some of the witnesses, whose statements have been recorded before the trial Court, general allegation of demand of dowry of Rs.1 lakh has been levelled against all the accused persons named in the F.I.R and no specific role or overact has

been assigned to the instant applicant and since the applicant is the father-in-law of the deceased, he may not be the beneficiary of the dowry which was being allegedly demanded.

7. While drawing the attention of this Court towards the extract of a *Pariwar Register* placed as Annexure No.1 to the supplementary affidavit dated 05.10.2023, it is vehemently submitted that since the applicant was living separately, he may not be obliged to explain the circumstances under which the deceased had either been done to death, as the same could only be explained by the husband of the deceased, who was admittedly residing with the deceased.

8. Further elaborating, it is submitted that by virtue of Section 106 of the Indian Evidence Act, the said sections may not be stretched morbidly so as to be applicable with regard to those persons who were not living in the same house.

9. It is also submitted that while rejecting the second bail application of the instant applicant, the co-ordinate Bench had directed the trial Court to conclude the trial within a period of one year from the date a certified copy of that order be submitted, however, the trial has still not concluded and having regard to the fact that only two prosecution witnesses have been testified so far, it is not expected that the trial may conclude in near future. Identically placed co-accused person, namely, Smt. Nisha Begum (Wife of the applicant/ Mother-in-law of the deceased) has been granted bail by a co-ordinate Bench of this Court, vide order dated 14.09.2021 passed in Criminal Misc. Bail Application No.1220/2021. The Applicant is languishing in jail in this case since 02.07.2020 and he is not having any criminal history 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.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that earlier three bail applications of the applicant have been rejected and there is no new ground available to the applicant since the rejection of his earlier bail application, therefore, he is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that earlier three bail applications moved on behalf of the applicant were not found favour by a co-ordinate Bench of this Court probably on the ground that the offence appears to be a heinous one. It appears to be an admitted case that while rejecting the second bail application of the applicant on 15.09.2022, co-ordinate Bench had directed the trial Court to conclude the trial within one year

from the production of a certified copy of that order. Admittedly, as is evident from a communication sent by the trial Court in response to the order of this Court dated 07.08.2023, only two prosecution witnesses have been testified so far and it is highlighted by the presiding Judge of the trial Court that from May, 2023 up to now, the local bar was on strike. Separate living has been claimed by the applicant who is the father-in-law of the deceased. The post mortem report of the deceased would reveal that many injuries have been found on her person and the cause of death has been ascertained as asphyxia due to strangulation. The defence of the applicant appears to be that since he was living separately, he may not be obliged to explain the circumstances under which the deceased has been done to death and he may also not be the beneficiary of Rs.1 lakh which was being allegedly demanded as it is the husband of the deceased who could explain the circumstances under which the deceased had died and may be the only beneficiary of the dowry. There is no dispute with regard to the identity of role of the instant applicant as well as co-accused, namely, Smt. Nisha Begum (mother-in-law of the deceased), who has been granted bail by a co-ordinate Bench of this Court and nothing has been brought in the knowledge of this Court which may suggest that the order whereby the identically placed co-accused Smt. Nisha Begum was granted bail, has been challenged at any higher forum or has been cancelled by the same Bench. Thus, having regard to the period of incarceration already undergone by the applicant (02.07.2020) and the stage of the trial Court (only two witnesses have been examined) so far, appears to be substantial change in the circumstances since the rejection of the earlier bail applications of the applicant. In result, the fourth bail application of the applicant is **allowed**.

12. Let the accused/applicant- **Laley @ Lal Babu** 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 :- 27.10.2023

Gurpreet Singh