

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9923 of 2023

Applicant :- Mohammad Mustkeem And 2 Other

Opposite Party :- State Of U.P Thru. Addil. Chief Secy. Home Deptt. Civil Sectr. Lko.

Counsel for Applicant :- Suvivek Bajpai, Amar Singh

Counsel for Opposite Party :- G.A., Amar Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Suvivek Bajpai, learned counsel for the accused-applicants, Shri Ujjwal Sen, Advocate holding brief of Shri Amar Singh, learned counsel appearing for the complainant/informant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicants- **Mohammad Mustkeem, Naushad and Mohammad Dilshad** for grant of bail, in Case Crime No. 04 of 2023, under Sections 498-A, 304-B I.P.C. and Section 3/4 D.P. Act, Police Station Maharajganj, District Raebareli, during trial.

3. Learned counsel for the accused-applicants while pressing the bail application submits that the applicants are the brother-in-law of the deceased and the deceased appears to have died after 04 years and 09 months of her marriage with the brother of the applicants by jumping into a 'canal' along with her two daughters.

4. It is vehemently submitted that general allegations of demand of 'motorcycle' and 'washing machine' has been levelled against all the accused persons named in the F.I.R. and no overt act or specific avertment has been made with regard to the applicants. All three applicants are students and in all probability they may not be the beneficiary of the dowry, which was being allegedly demanded.

5. It is further submitted that applicants have never committed any kind of cruelty with the deceased nor have demanded any dowry and there was no reason available for them to have treated the deceased with cruelty and as the deceased and the brother of the applicants were not having cordial matrimonial relations, it appears that aggrieved by the same the deceased has taken the extreme step.

6. It is further submitted that apart from the vague averments made in the F.I.R. and in the statement of the witnesses with regard to the applicants, there is no any other trustworthy and cogent material collected by the investigation, which may even remotely connected them with the crime.

7. It is also submitted that the applicants are languishing in jail in this case since 16.03.2023 and they are not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail they may flee from the course of law or may otherwise misuse the liberty.

8. It is next submitted that since the marriage of the deceased with the brother of the applicants they were living separately in the same house and since the deceased was not having cordial relations with her husband (brother of the applicants), the applicants are not in a position to explain the circumstances under which the deceased had died.

9. Learned A.G.A., however, opposes the prayer of bail of the applicants on the ground that it is not the deceased but the two daughters of her have died due to cruelty committed by the accused-applicants and, therefore, they are not entitled to be released on bail.

10. Shri Ujjwal Sen, learned counsel appearing on behalf of the complainant/informant vehemently opposes the prayer of bail of the applicants on the ground that the deceased was being subjected to cruelty in lieu of demand of 'motorcycle' and 'washing machine' and it could not be said that the brothers of the husband of the deceased could not be the beneficiary of the same and keeping in view that the deceased has died along with her two daughters, the applicants are not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that after about 04 years and 09 months of her marriage with the brother of the applicants the deceased has died. Admittedly the death of the deceased along with her two daughters are otherwise than in normal circumstances. It is alleged that soon before her death the deceased was being subjected to cruelty in lieu of demand of a motorcycle and washing machine. It is vehemently submitted on behalf of the applicant that the applicants are student and they were living separately and may not be the beneficiary of the motorcycle or washing machine especially in presence of the husband of the deceased and also as they were living separately, they may not be in a position to explain the

circumstances under which the deceased has either done to death or has committed suicide, as the same could only be explained by the husband, who was living/residing with the deceased. Applicants are languishing in jail in this case since 16.03.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicants may be secured before the trial court by placing adequate conditions.

12. 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 applicants have made out a case for bail. The bail application is thus **allowed**.

13. Let the accused/applicants- **Mohammad Mustkeem, Naushad and Mohammad Dilshad** involved in above-mentioned case, be released on bail on their furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicants shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

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

(iii) The applicants shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

16. 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 :- 19.10.2023

Praveen