

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10034 of 2023

Applicant :- Nagma

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

Counsel for Applicant :- Hari Mangal Singh, Ankit Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Heard learned counsel for the applicant and Sri G.D. Bhat, learned A.G.A.-1 for the State.
3. The present bail application has been filed by the applicant with a prayer to enlarge her on bail in Case Crime No.02 of 2023 (Sessions Trial No.1212 of 2023) under sections 498A, 304B IPC and 3 & 4 Dowry Prohibition Act, Police Station Mohanlal Ganj, District Lucknow.
4. It has been submitted by learned counsel for the applicant that complainant/ father of the deceased lodged FIR in which he has mentioned that his daughter was married with Taj Mohammad prior to two years of the incident and he has levelled general allegation of dowry demand against the family members of the applicant. Learned counsel for the applicant has submitted that the FIR indicates that general allegation of dowry demand has been levelled and there is no specific demand. Later on, the version of the FIR has been improved by the applicant in his statement recorded under section 161 Cr.P.C. wherein he has stated that additional dowry demand of motorcycle was made by in-laws of the deceased. It has been submitted by learned counsel for the applicant that deceased committed suicide by hanging and no internal or external injuries were found on the person of the deceased and only ligature mark was found on the neck of the deceased due to which she died. He has submitted that the cause of death is Anti mortem hanging. Learned counsel for the applicant has further

submitted that prior to present incident, no FIR or any complaint was ever filed against in-laws either by the deceased or by her family members. He also submitted that the applicant is "Nand" and she was taking due care of two children of Taj Mohammad born out of wedlock of his first wife and she has tried to satisfy the court that it was second marriage of Taj Mohammad with the deceased and the deceased was not happy with him, therefore, she committed suicide by hanging. The applicant has no previous criminal history.

5. On the basis of instructions, Sri G.D. Bhatt, Learned A.G.A. has stated that the applicant is in jail since 12.03.2023. He has submitted that it case of dowry death and the applicant is "Nand", therefore, her bail application is liable to be rejected.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that no internal or external injuries were found on the person of the deceased and the argument that the applicant is "Nand" and she is in jail since 12.03.2023, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, namely, **Nagma**, be released on bail in the above case crime number on her 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 she 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 her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her 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 her 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 her, 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 her in accordance with law.

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 :- 2.11.2023

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