

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10496 of 2023

Applicant :- Mohammadeen Alias Bablu

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Civil Sectt. Lko

Counsel for Applicant :- Ravi Patel, Bal Keshwar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Ravi Patel, learned counsel for the applicant and learned A.G.A. for the State

2. The applicant is seeking bail in Case Crime No. 367 of 2022, under section 498-A, 304-B I.P.C. & 3/4 D.P. Act. P.S- Kotwali Sadar, District- Lakhimpur Khiri.

3. As per the version in the F.I.R., the marriage of the first informant's daughter was solemnized with Mohammadeen @ Bablu (the applicant herein) about six years ago. A few days after, her husband and other members of the family began demanding dowry. The demand could not be fulfilled by the first informant, therefore, his daughter was put to atrocities by them. They murdered his daughter on 10.04.2022, and absconded after leaving the dead body in the hospital.

4. As per prosecution case, the role of husband Mohammadeen and mother-in-law of the deceased Munni were found in the incident and the charge sheet has been submitted by the Investigating Officer after conducting the investigation.

5. It is contended on behalf of the applicant that as per medical report, the deceased died due to asphyxia because of ante mortem hanging. No other injury except marks of hanging were found. The injury no.2 abraded contusion over the chin is the only other injury shown in the postmortem report which can be caused while trying to hang one self. The applicant has further pointed out to the G.D. entry no.17 of 11.04.2022, which depicts that it was the husband who took his wife to the hospital after the incident. It is argued that had it been a case of dowry death, the conduct of the accused would have been quite different. This entry shows his innocence. Further, it is submitted that it is a case of domestic dispute which might have led to the commission of suicide. It is further contended that the material available on record does not make out a case of 304-B at the most, it can touch the periphery of section 306 I.P.C. and no more.

6. The prosecution witnesses have imputed general allegations of demand of dowry and the commission of atrocities, without imparting any particular role to the applicant or anybody else. The applicant is in custody since 29.06.2022 there is no chance of absconding and not cooperating in the trial. It is further argued that accused cannot be kept detained in custody for indefinite period.

7. The application for bail is opposed by the learned A.G.A., however, he

has conceded that there is no external injury except that of ligature mark and abraded contusion over the chin and that there is G.D. entry which says that it was the husband who took his wife to the hospital.

8. I went through the contents of the F.I.R., postmortem report, the inquest report, statements given by witnesses under Section 161 Cr.P.C. who include the first informant (father of the deceased) and other family members like brother etc. Taking into account all the facts and circumstances of the case, as well as the period of custody, absence of any previous criminal history and all the attending facts and circumstances of the case, I find it a fit case for bail.

9. Let applicant - **Mohammadeen Alias Bablu** be released on bail in the aforesaid Case Crime Number on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not temper with evidence/witnesses.

(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) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) framing of charge and (ii) recording of statement under Section 313 Cr.P.C. without exception.

10. 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 :- 16.11.2023
Sumit Kumar