

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10980 of 2023

Applicant :- Jugri @ Kismatul

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

Counsel for Applicant :- Dhananjai Kumar Tripathi, Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri G.D. Bhatt, learned A.G.A.-I for the State and perused record.
2. The present bail application has been filed by the applicant with a prayer for bail in Case Crime No.51 of 2023 under Section 302 IPC, PS Nawabganj, district Bahraich.
3. Learned counsel for the applicant has submitted that brother of deceased informed the police on 16.3.2023 regarding death of his sister and he named the husband, father-in-law and mother-in-law but the applicant was not named in the information given on 16.3.2023. The inquest was also prepared on 16.3.2023 and thereafter, post mortem was conducted on 17.3.2023. The post mortem report indicates that cause of death is anti mortem strangulation and deceased received seven injuries on her body. The complainant lodged FIR on 19.3.2023 and in the FIR he has stated that prior to 12 years, his sister was married with Jabrail and she was having two children born out of wedlock. He has also mentioned that he had earlier given information to the police after knowing that his sister was lying dead in her house. He has submitted that later on, he came to know that the applicant, her brother and father had committed the offence and they had beaten her and thereafter, she was strangled.
4. Learned counsel for the applicant has submitted that applicant is married Nanad and out of her wedlock, four children were born. It has been submitted that the version of FIR has been improved because earlier, the information was given by the same complainant and the applicant was not named. However, he has mentioned that he came to know that the applicant was also involved in commission of crime that is why, he lodged report. He has further submitted that there is no allegation of dowry demand or harassment in the FIR that is

why, the chargesheet has been filed under Section 302 IPC only. He has submitted that once the chargesheet is filed under Section 302 IPC, then the Investigating Officer has to satisfy the test as to how the applicant was involved in commission of crime. He has submitted that there is no direct or clinching evidence collected by the Investigating Officer which may indicate that the applicant was involved in commission of crime. He has further submitted that the relation between the deceased and her husband Jibrail was not good and whatever was done, it was not done by the applicant and her case is distinguishable to the case of the husband. He has further submitted that some witness Tasavvur, Amresh Singh and Nankau Khan have stated that the applicant had come to her father's house on the date of occurrence and she had come to see the Jalsa (procession). He has further submitted that even if the statement of witnesses are taken on face value, it does not mean that the applicant had committed the offence or she had beaten the deceased. Learned counsel for the applicant has further submitted that the applicant is married lady and she was residing in Sasural at the relevant time but she has been falsely roped in the present case. He has further submitted that the applicant has no other criminal history and she is in jail since 20.3.2023.

5. Learned A.G.A. though opposed the prayer for bail and has submitted that though the applicant was not named in the FIR but in the statement of Tasavvur, Amresh Singh and Nankau Khan, it has come on record that on the date of occurrence, the applicant had visited her father's house and she also participated in the Jalsa (Procession). Thus, her presence is very much there and also in the statement of witnesses it has come that there was some dispute of the applicant with the deceased. He has further submitted that deceased was done to death by strangulation and the deceased received seven injuries.

6. Considering over all facts and circumstances of the case, the material available on record, the argument that there is no direct evidence found against the applicant that she was involved in commission of crime, the argument that the applicant is married Nanad having four children and has no concern with the present case, the argument that the applicant was not named in earlier information given by the complainant. However, she was named in the FIR, the argument that the applicant is lady, it is a fit case for bail.

7. Let the applicant, Jugri @ Kismatul 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.

8. 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 :- 20.12.2023

Rajneesh JR-PS)