

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11595 of 2023

Applicant :- Mahesh Kumar Gupta

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

Counsel for Applicant :- Neeraj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Sri Neeraj Singh, learned counsel for the applicant and Sri Asif Khan, learned A.G.A for the State and perused the record.

2. This bail application has been filed seeking release of accused/applicant- **Mahesh Kumar Gupta** on bail, in Case Crime No.55 of 2023 Under Sections-498-A, 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act, registered at Police Station- Bangarmau, District- Unnao, in which the bail has been rejected by the learned Sessions Judge, Unnao, vide order dated 29.8.2023 passed in Bail Application No. 2774 of 2023.

3. It is submitted by learned counsel for the applicant that before Trial Court, PW-1, i.e. father of the deceased and PW-2, i.e. mother of the deceased had become hostile. He has drawn attention of the Court towards the statement of PW-1 wherein he has deposed before the court that his daughter committed suicide and no demand of dowry was made by the in-laws and the present applicant. He further deposed that the deceased was not done to death due to demand of dowry and six lakh rupees additional demand of dowry was not made by the in-laws of the applicant and his daughter was living happily with his son-in-law. He further deposed that his daughter was suffering from mental depression and she was treated at Kanpur.

4. Learned counsel for the applicant has also submitted that PW-2, i.e. mother of the deceased was also declared hostile. He has submitted that there is no possibility that trial would be concluded in near future. He has also submitted that after looking into the statement of PW-1 & PW-2, i.e.

parents of the deceased, at the moment, it cannot be inferred that the applicant committed any crime as alleged in the F.I.R.

5. Learned counsel for the applicant has further stated that there is no criminal history of the applicant and he is in jail since 08.02.2023.

6. Learned A.G.A. has, however, opposed the prayer for grant of bail but could not dispute the fact that PW-1 & PW-2, i.e. parents of the deceased, were declared hostile.

7. Considering the overall facts and circumstances of the case, perusing the record, considering the nature of allegations, arguments advanced by the learned counsel for the parties, looking into the fact that PW-1 & PW-2, i.e. parents of the deceased, were declared hostile, the argument that there is no criminal history of the applicant and he is in jail since 08.02.2023, I find it to be a fit case for grant of bail.

8. Accordingly, the bail application is **allowed**.

9. Let the applicant- **Mahesh Kumar Gupta** be released on bail in the above case crime number on his 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 he 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 his counsel. In case of his 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 his 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 him, 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 him in accordance with law.

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 :- 1.11.2023

Manoj K.