

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11638 of 2023

Applicant :- Salama

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

Counsel for Applicant :- Anil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant and Sri Akhilesh Kumar Srivastava, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 412 of 2023, under sections 498-A, 304B IPC and Section 3/4 of Dowry Prohibition Act, Police Station Dhaurahara District Lakhimpur Kheri.

3. It has been submitted by learned counsel for the applicant that mother of the deceased lodged FIR making allegation that the applicant and his family members harassed the deceased and asked her to bring the additional dowry. She has further mentioned in the FIR that her daughter was beaten and throttled by the applicant and his family members. Learned counsel for the applicant has submitted that the applicant is 'Jethani' and general allegation of dowry demand has been levelled. He has further that there is anti mortem injury but the applicant had not beaten the deceased and she committed suicide by hanging herself and there is ligature mark on her neck. He has also submitted that the applicant has got one year child, who is also living with her in jail and the applicant and her child is suffering. He has further submitted that the case of the applicant is distinguishable to other co-accused and has requested that since the applicant is a lady as such the benefit of the section 437 Cr.P.C. may be extended to her. The applicant is in jail since 26.08.2023.

4. Learned A.G.A. has opposed the prayer for bail and has submitted that it is a dowry death and there is an act of the applicant also in commission of crime which is evident after looking to the version of the FIR as such the

applicant is not entitled for bail.

5. 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 the deceased committed suicide by hanging herself, the argument that the case of the applicant is distinguishable to other co-accused and the argument that general allegation of dowry demand has been levelled and the applicant is 'Jethani', therefore, I am of the opinion that the applicant is entitled to be released on bail.

6. Let the applicant, namely, **Salama**, 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 :- 18.10.2023

dk/