

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11686 of 2023

Applicant :- Sabroon

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

Counsel for Applicant :- Pawan Kumar Sharma

Counsel for Opposite Party :- G.A., Pawan Kumar Mishra

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the State, a copy of which has been given to learned counsel for the applicant, is taken on record.

2. Rejoinder affidavit filed by learned counsel for the applicant is also taken on record.

3. Heard Shri Pawan Kumar Sharma, learned counsel for the applicant, Shri Pawan Kumar Mishra, learned counsel appearing for the complainant/informant as well as learned A.G.A. for the State and perused the record.

4. This bail application has been moved by the accused/applicant- **Sabroon** for grant of bail, in Case Crime No. 139 of 2023, under Section 306 I.P.C., Police Station Hardatnagar Girant, District Shrawasti, during trial.

5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. Allegation as contained in the F.I.R. lodged by the brother of the deceased are to the tune that the applicant as well as her husband were committing cruelty with the first wife of the main accused Naseem Khan and on 02.07.2023 at 12:30 am. the applicant and Naseem Khan has caused the death of the deceased by strangulating her with her 'scarf'. In the postmortem report of the deceased multiple 'ligature mark' has been found and the cause of death has been shown due to 'asphyxia' as a result of 'antemortem hanging'.

6. Highlighting the above facts, it is vehemently submitted that the doctor who has conducted the postmortem of the deceased, namely, Shri Amresh Jaiswal has categorically stated in her statement given under Section 161 Cr.P.C. that there was no evidence with regard to the smothering or strangulation of the deceased and there was either no injury on his person and the cause of her death was 'asphyxia' as a result of 'antemortem hanging'. Charge sheet against the applicant has also been

submitted under Section 306 I.P.C. Thus, the deceased appears to have committed suicide.

7. It is further submitted that applicant is the second wife of the deceased while the deceased was the first wife of co-accused Naseem Khan. It is submitted that there is no evidence or material with regard to any cruelty or abetment given by the applicant and if solemnizing marriage with the husband of the deceased is treated as an abetment, the same may only be attributed to the co-accused Naseem Khan, as it was he (Naseem Khan) who has solemnized marriage with the applicant.

8. It is further submitted that to constitute an offence under Section 306 I.P.C. the alleged act must have direct nexus with the commission of suicide and if there is no direct nexus abetment could not be presumed, which is missing in the instant case.

9. It is next submitted that applicant is a lady and in jail in this case since 03.07.2023 and she is not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail she may flee from the course of law or may otherwise misuse the liberty.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, she is not entitled to be released on bail.

11. Shri Pawan Kumar Mishra, learned counsel appearing for the complainant/informant also opposes the prayer of bail of the applicant on the ground that the applicant was instrumental in committing cruelty with the deceased in association with her husband and since the deceased was the first wife of the co-accused Naseem Khan, the applicant may also not be exonerated from abetting the suicide committed by the deceased.

12. Having heard learned counsel for the parties and having perused the record, it is transpired that the cause of death of deceased has been ascertained as 'asphyxia', as a result of 'antemortem hanging'. The doctor who has conducted the postmortem, has categorically opined that there was no evidence with regard to strangulation or smothering or no injury of any kind has been found on the person of the deceased. Thus, the deceased appears to have committed suicide. Co-accused Naseem Khan is the first husband of the deceased and he has

solemnized second marriage with the applicant. It has been submitted on behalf of the applicant with considerable force that if marrying second time is presumed as an 'abetment', the same could only be attributed to the main accused Naseem Khan and also that there is no evidence with regard to the committing any cruelty with the deceased. Thus, the role of the instant applicant is distinguishable and different from the role of the main accused Naseem Khan. Applicant is a lady. She is in jail in this case since 03.07.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

13. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

14. Let the accused/applicant- **Sabroon** involved in above-mentioned case, be released on bail on her furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

15. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

16. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

17. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 13.10.2023/Praveen