

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11875 of 2023

Applicant :- Ranjeet

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

Counsel for Applicant :- Rehan Ahmad Siddiqui

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved on behalf of the **applicant/Ranjeet** for grant of bail, in Case Crime No. 172 of 2021, under Section 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act, Police Station Ramkot, District Sitapur, during pendency of trial.

3. Learned counsel for the applicant submits that this is the third bail application moved on behalf of the applicant as earlier two bail applications have been rejected. However since rejection of the first bail application of the applicant on 28.03.2022 there has been material change in circumstances as parents of the deceased have been testified before the court below as PW-1 and PW-2 and this aspect of the matter was not considered at the time of rejection of second bail application of the applicant on 31.08.2022.

4. Elaborating further it is submitted that the FIR of this case was lodged by father of the deceased on 24.04.2021 at Police Station Rampur, District Sitapur against the applicant (husband) and his other family members with the allegations that marriage of the deceased was solemnized with the applicant about one year before lodging of the FIR and she was being treated with cruelty in lieu of demand of dowry and on 23.04.2021 at 6.00 p.m. they were informed that the deceased has been done to death and her dead body was found in her matrimonial house.

5. It is vehemently submitted that in the statement of prosecution witnesses recorded by the Investigating Officer, general allegation of demand of a cooler and almirah has been alleged against all the accused persons named in the FIR. However, having regard to the financial condition of the parties, the demand of cooler and almirah appears to be highly

improbable. It is also submitted that the informant as well as mother of the applicant have been testified before the trial court as PW-1 and PW-2, while PW-1- Satish (father of the deceased) has supported the allegations of the FIR in his examination-in-chief but during the course of cross examination he become hostile and did not support the prosecution story and stated that FIR was not read over to him and the deceased was not being treated with cruelty in lieu of demand of dowry.

6. It is also submitted that mother of the deceased, namely, PW-2-Sunita Devi has also not supported the prosecution version in her examination-in-chief and has been declared hostile and she has disowned her statement recorded under Section 161 Cr.P.C and has categorically stated that the deceased was not being subjected to cruelty in lieu of demand of dowry and these both witnesses have stated that the deceased was suffering from some disease whereby she used to feel pain in her abdomen.

7. It is also submitted that in the post-mortem report though four simple injuries are shown to have been sustained by the deceased but the cause of death could not be ascertained and VISCERA of the deceased was preserved, however till now VISCERA report has not been furnished and therefore cause of death of the deceased is still unknown and having regard to the fact that parents of the deceased have not supported the prosecution version, there is nothing on record on the basis of which presumption under Section 113-B of Indian Evidence Act may be drawn. The applicant is in jail in this case since 24.05.2021, he is not having any criminal history and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

8. Learned A.G.A., on the other hand, opposes the prayer of the applicant on the ground that earlier two bail applications of the applicant have been rejected on merits and there is no substantial change since rejection of the earlier bail applications of the applicant, moreover, he is husband of the deceased.

9. Having heard learned counsel for the parties and having perused the record, it appears that earlier two bail applications of the applicant have been rejected by coordinate bench of this Court, however, the Hon'ble Judge who has rejected the bail application, has now been transferred to some other High Court. The post mortem report of the deceased would reveal that four injuries of the nature of contusion and abrasions have been found on her person, however, cause of death could not be ascertained and VISCERA was preserved. The State in the counter affidavit has not enclosed the VISCERA report and it is

submitted by learned counsel for the applicant that cause of death of the deceased is still unknown.

10. It is also reflected that the informant/father and mother of the deceased have been testified before the court below as PW-1 and PW-2. The father of the deceased though supported the prosecution story in his examination-in-chief but has not supported the same while under cross examination and stated that the FIR was not read over to him and the deceased was not being subjected to cruelty in lieu of any demand of dowry. Similar is the statement of mother of the deceased and it is in this background it is submitted with considerable force that to attract the presumption as provided under Section 113-B of Indian Evidence Act, the prosecution is required to prove the initial facts and in absence of the same no presumption as provided under Section 113-B of Indian Evidence Act may be drawn and since in this case the parents of the deceased have not proved the initial facts on the basis of which presumption under Section 113-B of Indian Evidence Act may be drawn, the chances of conviction of the applicant are remote.

11. Be that as it may, there appears substantial change in circumstances since rejection of the earlier two bail applications of the applicant as the star witnesses of the crime, namely, parents of the deceased have not supported the version of the prosecution in their statements recorded before the trial court, the applicant in this case is in jail since 24.05.2021 and he is not having criminal history and this factual matrix in the considered opinion of the Court would amount to substantial change in circumstances since the rejection of the earlier bail applications of the applicant. In result, the third bail application moved by the applicant is **allowed**.

12. Let the **accused applicant/Ranjeet** involved in above-mentioned case, be released on bail on his 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.

13. In case of breach of any of the above conditions, it shall be

a ground for cancellation of bail.

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

15. 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 :- 30.10.2023

Renu/-