

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14459 of 2022

Applicant :- Rekha Devi

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

Counsel for Applicant :- Pt. Devesh Kumar Mishra, Ashok Kumar Shukla, Pradeep Chaurasia

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Ashok Kumar Shukla, 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 by the accused/applicant- **Rekha Devi** for grant of bail, in Case Crime No. 160 of 2022, under Section 302 IPC, Police Station Nawabganj, District Bahraich, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
4. It is further submitted that the applicant is the wife of the deceased and in the FIR lodged by an independent person/chowikdar of the village namely, Shalik Ram, it is stated that he got an information in the intervening night of 25/26.7.2022 that the deceased had attempted to commit rape on her daughter-in-law and he was done to death by his daughter-in-law with the help of the applicant (wife of the deceased).
5. It is vehemently submitted that apart from suspicion and apprehension, there is nothing against the applicant and except the confessional statement recorded by the investigating officer, there is no material or evidence which may be placed against the applicant and the confessional statement of the applicant recorded while in the police custody may not be proved against her by virtue of bar contained under Section 26 of the Indian Evidence Act.
6. It is further submitted that even if the story as investigated by the investigating officer as well as occurred in the confessional statement of the applicant and the co-accused is believed as it is, the same would be sufficient to bestow a right to defend her person to the daughter-in-law of the applicant and the deceased as she was attempted to be raped by the deceased

and even if the daughter-in-law might have exceeded in exercising her right to defend her body, the same may not give birth to an offence under Section 302 IPC and the same may only be confined to Section 304 IPC.

7. Elaborating further, it is submitted that whether the daughter-in-law of the deceased namely, Smt. Rekha Devi (applicant) was having any right to defend her body, is yet to be decided by the trial court after providing an opportunity to lead evidence to the parties and the right to private defence, as provided under Sections 96 and 106 IPC, is not confined to be exercised by the person against whom the offence is being committed and that right may be exercised by any person in whose presence, the offence is being committed, therefore, the applicant would also be protected by the same right, if she has assaulted the deceased to defend her daughter-in-law.

8. It is further submitted that the injuries, which have been sustained by the deceased, may only fortify the presence of the right to private defence and also exercise of the same by the applicant and her daughter-in-law. The applicant is a lady and is in jail in this case since 30.7.2022 having no criminal antecedents. Charge sheet in the matter has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

9. Learned A.G.A., on the other hand, opposes the prayer for bail of the applicant and submits that the applicant is an accused of committing murder of her own husband and, therefore, she is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the allegation against the applicant and co-accused are to the tune that they have caused the death of the deceased (father-in-law of the co-accused and husband of the applicant) by strangulation. The post mortem report of the deceased would reveal that various injuries have been sustained by deceased which are of minor nature except a ligature mark which has resulted in strangulation and cause of death of deceased has been ascertained as asphyxia, as a result of ante mortem strangulation. During the course of the investigation, the investigating officer has recorded the confessional statement of the applicant and of the daughter-in-law of the deceased and there are other witnesses also who have stated that the deceased was having a bad eye on his daughter-in-law and in the intervening night, he attempted to rape her and on an alarm raised by the daughter-in-law, the applicant joined her daughter-in-law and caused death of the deceased with the

help of the applicant. The injuries, which have been sustained by the deceased except a ligature mark, may commiserate with the confessional statement of the applicant and co-accused (daughter-in-law of the deceased). Whether the applicant and the co-accused were having a right to defend their body, may only be determined by the trial court after full-fledged criminal trial. However, it appears to be undisputed that apart from the confessional statement of the applicant and co-accused, there is no evidence or material against the applicant. The applicant is in jail in this case since 30.7.2022 without any criminal history. Charge sheet in the matter has already been filed. Her presence could be secured before the trial court by placing any adequate conditions.

11. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

12. Let the applicant- **Rekha Devi** involved in the aforesaid case be released on bail on 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 are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 20.12.2023
Shravan