

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13090 of 2023

Applicant :- Pappu Alias Shakeel

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

Counsel for Applicant :- Ashish Raman Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including the case diary.
3. On 06.11.2023 an opportunity was provided to the State to verify the submissions made on behalf of the applicant with regard to the fact that prosecution witnesses of fact have been testified before the trial Court and they have become hostile. It is in this background, the bail application is being disposed of.
4. Heard Shri Ashish Raman Mishra learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
5. This bail application has been moved by the accused/applicant- **Pappu Alias Shakeel** for grant of bail, in Case Crime No. 458 of 2022, under Sections 498-A, 304-B, 323 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Risiya, District Bahraich, during trial.
6. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution. He has never demanded any dowry either from the deceased or from his in-laws nor he ever treated the deceased with cruelty in lieu of demand of dowry and these facts have been carved out subsequently.
7. It is further submitted that since the marriage of the deceased with the applicant she was suffering from mental disorder and it appears that in that state she has taken the extreme step of suicide.

8. While drawing the attention of this Court towards the first information report lodged by the informant/Raju (father of the deceased), it is submitted that no specific dowry has been mentioned therein, which was being allegedly demanded and the statements of the informant recorded by the investigating officer also reveals that the informant was not sure about the death of the deceased and if his statements are read conjointly, it would emerge that the F.I.R. as well as some of his statements have been given only on account of instigation given by the fellow-villagers. In this regard, learned counsel for the applicant has highlighted the affidavit given by the informant, a copy of which, has been placed as Annexure No.5 of the bail application as well as the additional statement of the informant recorded on 11.03.2023 wherein the informant has categorically stated that it is a case of suicide and the deceased was under some depression and she did not make any complaint about anything to him.

9. It is vehemently submitted that having regard to the contradictory statements given by the informant, the investigating agency got the statement of the informant recorded under Section 164 Cr.P.C. It is also submitted that though, the prosecution witnesses have supported the prosecution theory during the course of investigation, however, during the course of trial four prosecution witnesses have been testified, namely, P.W.-1/Raju (Informant/father of the deceased), P.W.-2/Safroon (Mother of the deceased), P.W.-3/Mohd. Umar (Grandfather of the deceased), P.W.-4/Muslim and all these prosecution witnesses have not supported the theory of prosecution and have categorically denied that the deceased was being subjected to cruelty in lieu of any demand of dowry.

10. Highlighting the above facts, it is further submitted that even to draw a presumption under Section 113-B of the Indian Evidence Act, the prosecution is obliged to prove the initial facts on the basis of which such presumption may be drawn, which are not available in this case, as all the prosecution witnesses of fact testified before the trial Court, have categorically stated that the deceased was not being subjected to cruelty in lieu of demand of dowry. Thus, one of necessary ingredients of Section 304-B I.P.C. is missing.

11. It is next submitted that applicant is languishing in jail in this case since 04.06.2023 and he is not having any criminal history. Almost four prosecution witnesses have been testified and all of them have been declared hostile and the applicant would not be in a position to influence the prosecution witnesses if the facility of bail is granted to him.

12. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that he is the husband of the deceased, who had died a little after one year of her marriage with the applicant and, therefore, he is not entitled to be released on bail.

13. Perusal of the record would reveal that the death of the deceased had occurred a little after one year of her marriage with the applicant. The postmortem report of the deceased would reveal that a 'ligature mark' has been found around her neck along with a contusion on her 'eyelid' and the cause of death has been ascertained as 'asphyxia', as a result of 'antemortem hanging'. It appears to be an admitted situation that none of the prosecution witnesses of fact have supported the prosecution version of the incident and have categorically stated that the deceased was not being subjected to cruelty in lieu of any demand of dowry and it is in this background, it is submitted that since all the prosecution witnesses of fact have been declared hostile, the conviction of the applicant is a remote possibility. Applicant is languishing in jail in this case since 04.06.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

14. 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**.

15. Let the accused/applicant- **Pappu Alias Shakeel** 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.

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

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

18. 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 :- 9.11.2023

Praveen