

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13136 of 2023

Applicant :- Mustafa And Another

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

Counsel for Applicant :- Rajeev Kumar Mishra Rudra

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicants, Sri Anoop Kumar Upadhyay, learned counsel for the complainant, Sri Diwakar Singh, learned A.G.A. for the State and perused record.

2. The present bail application has been filed by the applicants with a prayer to enlarge them on bail in Case Crime No.207 of 2023 under Section 498-A, 304-B IPC, Section 3/4 of D.P. Act, PS Khargupur district Gonda.

3. Learned counsel for the applicants has submitted that FIR has been lodged by the father of deceased making general allegation of dowry demand and the allegation levelled is that the motorcycle was demanded by the family members for additional dowry. He has submitted that both the applicants are Jeth (brother-in-law) of the deceased and they are living separately. Learned counsel for the applicants has filed copy of Pariwar Register and Ration Card of applicants collectively contained as Annexure No.5 to the bail application. The Pariwar Register and Ration Card of applicant No.1 Mustafa indicates that he is the sole member of his family and House No.335. Similarly, the Pariwar Register of applicant No.2 indicating name of his wife and son. He has submitted that the Pariwar Register of both the applicant indicate that the deceased and husband are not included in the Register and the applicants are living separately in separate house.

4. Learned counsel for the applicants has submitted that the marriage of deceased had taken place prior to three years and the deceased committed suicide. He has further submitted that deceased was issueless and under the depression, she committed suicide. He has submitted that the applicants have no criminal history and they are in Jail since 12.8.2023.

5. On the other hand, learned counsel for the complainant has submitted that it is the case of dowry death which occurred within 7 years of marriage, therefore, the applicants being family members are responsible for offence. Learned A.G.A. has opposed the bail and has submitted that it is a case of dowry death which occurred within 7 years of marriage, therefore, the bail is liable to be rejected.

6. Considering over all facts and circumstances of the case, the argument that the

applicants who are Jeth and deceased committed suicide by hanging, the argument that the applicants are residing separately and their Pariwar Register and house numbers are separate, it is a fit case for bail.

7. Let the applicant, Mustafa and Idreesh released on bail in the above case crime number on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of his absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against them in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants 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 applicants 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 them in accordance with law.

8. 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 :- 7.11.2023

Rajneesh JR-PS)