

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13652 of 2023

Applicant :- Pooja Chaurasiya And Another

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home, Civil Secrty. Lko.

Counsel for Applicant :- R.B.S. Rathaur

Counsel for Opposite Party :- G.A., Prashant Agarwal, Rohit Kannojiya

Hon'ble Brij Raj Singh, J.

1. Application for rejection of bail application on behalf of informant has been filed by learned counsel for the complainant, the same is taken on record.

2. Heard Shri R.B. S. Rathaur, learned counsel for the applicants, Shri Prashant Agarwal, learned counsel for the complainant and Shri Ranvijay Singh, learned AGA for the State and perused the record.

3. The present bail application has been filed by the applicants with a prayer to enlarge him on bail in Case Crime No. 0306 of 2023, under Sections 498-A, 304-B I.P.C., and Section 3/4 D.P. Act, Police Station Asandra, District Barabanki.

4. Learned counsel for the applicants submitted that the applicant No.1 is Jethani and applicant no.2 is Jeth of the deceased and they are living separately. He submitted that co-accused Dewar namely, Ashish Chaurasiya has been granted bail by coordinate Bench of this Court in Criminal Misc. Bail Application No.13105 of 2023 on 07.11.2023. The said order is quoted below :

" 4. This bail application has been moved by the accused/applicant-Ashish Chaurasiya for grant of bail, in F.I.R./Case Crime No.0306 of 2023, under Sections 498-A, 304-B I.P.C. and Section 3/4 of the Dowry Prohibition Act, 1961, Police Station Asandra, District Barabanki, during trial.

5. 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.

6. It is further submitted that the allegations against the applicant and other co-accused persons are to the tune that they were treating the deceased with cruelty in lieu of demand of dowry, who had died a little after three years of her marriage with the brother of the applicant and the applicant was also instrumental in demanding Rs. 10 lacs and a 'four wheeler'.

7. Highlighting the above facts, it is vehemently submitted that general

role of demand of dowry and committing cruelty in lieu thereof has been attributed to all the accused persons named in the F.I.R. as well as in the statement of the prosecution witnesses and no overt act or any specific allegation has been levelled against the instant applicant.

8. It is further submitted that applicant was living separately from his brother Rahul (husband of the deceased) and is also running a separate business in the name of Shri Balaji Traders, a copy of the registration certificate of the same has been placed at Page No.65 of the paper book in order to show that since the marriage of the deceased with the brother of the applicant, the applicant is not having any concern with their affairs and they were living separately.

9. While drawing the attention of this Court towards a copy of the 'ration card' of the applicant as well as of the husband of the deceased placed at Page No. 60 and 61 of the paper book, it is submitted that the applicant is the 'brother-in-law' (devar) of the deceased and he by any stretch of imagination may not be the beneficiary of dowry, which could only be received by the husband of the deceased.

10. It is next submitted that applicant is languishing in jail in this case since 01.08.2023 and he is not having any criminal history and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

11. 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, he is not entitled to be released on bail.

12. Shri Rupesh Kumar Kasaudhan, learned counsel for the complainant/informant vehemently opposes the prayer of bail of the applicant on the ground that the business of the applicant as well as of the husband of the deceased is one and same and Rs. 10 lacs were being demanded for up gradation of the business and it could not be said that the applicant is not the beneficiary of the dowry, which was being demanded from the deceased.

13. It is also highlighted that an observation has been made by the investigating officer in the case diary having regard to the C.C.T.V. footage where the family members of the applicant and applicant are seen taking the body of the deceased out of the house and then a little after taking the the same back to their house in order show that they had taken the deceased for some treatment and it is vehemently submitted that having regard to the fact that applicant was instrumental in committing cruelty with the deceased in lieu of demand of dowry, he is not entitled to be released on bail.

14. Having heard learned counsel for the parties and having perused the record, it is reflected that the deceased had died a little after three years of her marriage with the brother of the applicant. Applicant admittedly is the 'devar' (brother-in-law) of the deceased. Separate living has been claimed and it is also submitted that the husband of the deceased as well as the applicant were/are running separate businesses having distinct entity. As

per the postmortem report, the cause of death of the deceased could not be ascertained and viscera was preserved. In the viscera report, 'aluminum phosphide' has been found. Thus, the deceased appears to have died by consumption of poisonous substance. The defence of the applicant appears to be that he is the brother-in-law (devar) of the deceased and was living separately running a distinct and separate business and he may not be the beneficiary of the dowry, which was being allegedly demanded. Separate living has also been claimed. Applicant is languishing in jail in this case since 01.08.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions and the apprehension, which has been shown by learned counsel for the complainant/informant with regard to the security of the witnesses, may also be taken care of by imposing suitable conditions. In result, in the considered opinion of this Court, the facility of bail may safely be extended to the applicant. The bail application is thus allowed."

5. Learned counsel for the applicants submitted that ration card (Annexure 7) indicates that applicants are residing with co-accused Ashish Chaurasiya, who has been granted bail. It has been further submitted that applicants are doing separate business and co-accused Rahul is also residing with him. Learned counsel for the applicants submitted that the case of the applicant is at par with the co-accused Ashish Chaurasiya and he is also pressing the same grounds as has been advanced in the case of co-accused. The applicants have no criminal history. The applicants are in jail since 02.08.2023.

6. Learned counsel for the complainant has raised three objections while opposing the bail. (i) the accused persons and husband assaulted the deceased due to which she died. (2) Secondly, brother of the deceased had registered FIR in which allegation of threatening and tampering of the evidence is levelled. He submitted that for 15 days, the accused were absconding and thereafter they surrendered before the Court. He submitted that allegation of cruelty is levelled therefore, case is coming within the purview of dowry death therefore, bail of the applicant is liable to be rejected.

7. Learned AGA opposed the prayer for bail and reiterated the same version.

8. The first argument placed by learned counsel for the complainant is to be seen by this court and as per post mortem report, there is minor abrasion but cause of death could not be ascertained. Doctor did not gave opinion regarding cause of death as such viscera was preserved. The viscera report indicates that Aluminum phosphide was found as such death occurred due to poison. The second

argument raised that FIR is lodged by the complainant during present case but the version of FIR indicates that it is lodged against co-accused Rahul, who is husband of the deceased and applicants are not named. No other argument has been raised by learned counsel for the complainant.

9. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and considering the argument that the case of the applicants is coming within the purview of parity as co accused Ashish Chaurasiya having similar role has already been granted bail, argument that general allegations of dowry demand has been levelled against the applicants and they have separate living, as such the applicants are entitled to be released on bail.

10. Let the applicants, Pooja Chaurasiya and Amit Chaurasiya be released on bail in the above case crime number on his 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 their absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuses 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.

11. 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 :- 22.11.2023

Pks