

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14491 of 2023

Applicant :- Nan Babu

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

Counsel for Applicant :- Sharvan Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Sharvan Kumar Pandey, learned counsel for the applicant, Shri Ravish Chandra Mishra, learned AGA for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.751 of 2023, under Sections 498-A, 306 I.P.C., and Section 3/4 D.P. Act, Police Station Gilaula, District Shravasti.

3. Learned counsel for the applicant submitted that admittedly, marriage of the applicant had taken place with the deceased prior to eight years. It has been submitted that FIR has been lodged by father of the deceased making allegation that additional dowry was demanded by the applicant and his family members. It was further mentioned that his daughter was missing and he got information therefore, he was searching her and thereafter her body was found in canal 28.09.2022 and he has expressed doubt that applicant has instigated her to commit suicide for additional dowry that is why she committed suicide.

4. Learned counsel for the applicant submitted that statement of many witnesses have been recorded by the police namely Kaushalya, Savitri and Ram Jiyawan under section 161 Cr.P.C. and all of them have stated that deceased had two children out of wedlock and applicant was residing in Mumbai. There was some altercation with applicant and his family members therefore, she had come to her parents' house on 24.09.2022. Thereafter she was again brought to her house by her father, thereafter she was missing from 27.09.2022 and she was seen going towards pakki sadak. Learned counsel for the applicant has submitted that in the statement of Ram Jiyawan he has stated that deceased had conversation with her husband who was working in Mumbai. Admittedly, the applicant was not residing at home because he was working in Mumbai.

5. Learned counsel submitted that there is no active act mentioned or shown by the prosecution side to indicate that applicant instigated in any manner the deceased to commit suicide, therefore, ingredients of section 107 IPC is not meted out as there is no direct evidence available against the applicant. It has been further submitted that there was no dowry demand or FIR lodged by family

members of the deceased prior to the present case. The applicant has no criminal history and is in jail since 01.07.2023.

6. On the other hand, learned AGA opposed the prayer for bail and submitted that harassment was done by the applicant for additional dowry as such the deceased committed suicide therefore, bail of the applicant is liable to be rejected.

7. Considering the over all facts and circumstances of the case and looking to the argument that ingredients of Section 107 IPC is not meted out ; argument that applicant was residing at Mumbai at the relevant time; argument that statement of witnesses indicates that deceased committed suicide as such it is a fit case for bail.

8. Let the applicant **Nan Babu** 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 applicant shall file an undertaking to the effect that he 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 applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

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

(iv) The applicant 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 applicant 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 him in accordance with law.

9. 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 :- 8.12.2023

Pks