

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 835 of 2023

Applicant :- Naresh

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

Counsel for Applicant :- Ashutosh Pathak, Dr. Shyam Kumar Singh, Vijay Prakash Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Shri Ashutosh Pathak, learned counsel for the applicant, Shri Ashok Kumar Singh, learned AGA-I for the State and perused the material available on record.

The applicant Naresh has moved the present bail application seeking bail in case crime No. 299 of 2022, under Sections 498-A, 304-B I.P.C. and Section 3,4 of Dowry Prohibition Act, Police Station Kachhauna, District Hardoi.

An FIR was lodged by the complainant, who is brother of the deceased against the applicant and his family members alleging therein that he had solemnized the marriage of her sister with applicant Naresh on 22.4.2021 according to Hindu rites and rituals. The in laws' family of her sister used to taunt for giving less dowry and torture her for the same, due to which she used to live under stress and mental pressure. On the date of incident i.e. on 10.7.2022 the accused persons named in the FIR have killed her sister and hanged her. This information was given by the villagers of the in laws' village of her sister on phone to the complainant.

Learned counsel for the applicant submits that the applicant is innocent and has falsely been implicated in the present case due to *mala fide* intention. The applicant is husband of the deceased. The marriage of applicant and deceased was solemnized on 22.04.2021. The relation between the deceased and the applicant was cordial except some minor dispute which always happens between husband and wife. Though in the FIR the complainant has not mentioned anywhere about the articles which were demanded as dowry by the accused persons named in the FIR, rather he in his statement recorded under section 161 Cr.P.C, the complainant has stated that accused persons named in the FIR have made demand of dowry in the form of motorcycle, which falsifies the prosecution story.

Learned counsel for the applicant further submits that as per the version of FIR and the statement of the complainant recorded under sections 161 Cr.P.C. general allegation regarding demand of dowry and causing cruelty to the deceased was made against the applicant and his other family members named in the FIR

and no specific allegation for the same was made against the applicant or his family members named in the FIR. Prior to the alleged incident no any complaint was ever made either by the deceased or her parents to any of the authorities regarding demand of dowry or causing cruelty to the deceased by the applicant or his family members named in the FIR.

Learned counsel for the applicant further submits that on the similar allegation regarding demand of dowry and causing cruelty to the deceased, the investigating officer after investigation of the case, has dropped the names of co-accused Neeraj alias Rajesh, Ranjt, Santosh, Chhotu alias Sanit. Smt. Anita Shivanai and Suman from the chargesheet and filed chargesheet only against the applicant and his mother Ram Devi alias Nanhanki. Thus the prosecution story appears to be false and fabricated.

Learned counsel for the applicant further submits that the post mortem of the deceased was conducted. The cause of death of deceased was Asphyxia due to ante mortem hanging only with one ligature mark and except one ligature mark there is no any other injury found on the body of the deceased. In support of his argument, learned counsel of the applicant placed reliance upon the extract of Modi's Medical Jurisprudence wherein definition of hanging has been described and as per the post mortem report of the deceased it is almost identical to the definition of hanging given in Modi's Jurisprudence. Learned counsel for the applicant submits that since as per the Modi's jurisprudence and as per the post mortem report of the deceased they both are identical, it is a case of hanging and not of murder or strangulation.

Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the applicant have also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It has also been pointed out that the applicant is not having any criminal history and is in jail since 13.7.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned A.G.A.-1 while opposing the prayer for bail of applicant submitted that the death of the deceased had occurred within seven years of her marriage and she was being subjected

to cruelty in lieu of demand of dowry, therefore, the applicant is not entitled to be released on bail.

After perusing the record in the light of the submissions made at the Bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence; there are only general allegation made in the FIR against the applicant and his other family members named in the FIR regarding demand of dowry and causing cruelty to the deceased and no specific allegation for the same has been made to the applicant; nor prior to the alleged incident any complaint regarding demand of dowry or causing cruelty to the deceased was made either by the deceased or her family members to any of the authorities against the applicant or her family members; and as per the post mortem report of the deceased, the cause of death is 'asphyxia due to ante mortem hanging with one ligature mark'; thus, there appears to be force in the arguments as advanced by the learned counsel for the applicant that the definition given in Modi's Medical Jurisprudence regarding hanging and the injury mark given by the doctor in the post mortem report it appears to be a case of hanging and not of strangulation or murder; names of co-accused Neeraj alias Rajesh, Ranjt, Santosh, Chhotu alias Sanit. Smt. Anita Shivanai and Suman have been dropped from the chargesheet and only the applicant and his mother Ram Devi have been chargesheeted and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the cases of **Dataram Singh Vs. State of UP and another**, reported in (2018) 3 SCC 22, this Court is of the view that the applicant may be enlarged on bail.

The prayer for bail is granted. The application is **allowed**.

Let the applicant, **Naresh S/o Late Mathura Prajapati**, involved in Case Crime No. 299 of 2022, under Sections 498-A, 304-B I.P.C. and Section 3, 4 of Dowry Prohibition Act, Police Station Kachhauna, District Hardoi be enlarged on bail on his executing a personal bond and two sureties, each in the like amount, to the satisfaction of the court concerned, on the following conditions :-

(1) The applicant will not make any attempt to tamper with the prosecution evidence in any manner whatsoever.

(2) The applicant will personally appear on each and every date fixed in the court below and his personal presence shall not be

exempted, unless the court itself deems it fit to do so in the interest of justice.

(3) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(4) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(5) In case, the applicant misuses the liberty of bail 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.

(6) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

(7) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

(8) The concerned Court/ Authority/ Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

It may be observed that in the event of any breach of the aforesaid conditions, the court below shall be at liberty to proceed for the cancellation of applicant's bail.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merit of the case.

(Shamim Ahmed, J.)

Order Date :- 24.7.2024/A.Nigam