

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3597 of 2023

Applicant :- Ajay Vishwarkarma

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

Counsel for Applicant :- Ravi Shankar Mishra, Mukesh Kumar Tewari, Sheo Prakash Singh, Sushil Kumar Yadav

Counsel for Opposite Party :- G.A., Anamika Singh, Paritosh Shukla

Hon'ble Shamim Ahmed, J.

1. Case is take up in the revised list.
2. Sri Mukesh Kumar Tewari, Advocate is present for the applicant. He submits that has served a written notice to the learned counsel for the Informant, Anamika Singh, and receiving has been taken on the notice, which is on record.
3. The Court waited for five minutes, but neither Miss Anamika Singh or Mr. Paritosh Shukla, Advocate, the another counsel whose name is printed on the *vakalatnama*, is not available to argue the case.
4. Heard learned counsel for the applicant as well as the learned A.G.A. for the State and perused the record.
5. This bail application has been moved by the accused/applicant- Ajay Vishwakarma S/o Om Prakash Vishwakarma for grant of bail in Case Crime No.147 of 2022, under Sections 498A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Kandhai, District Pratapgarh.
6. Learned counsel for the applicant submits that the applicant is husband of the deceased and is innocent. He has been falsely implicated in the present case. He further submits that marriage of the applicant and the deceased was solemnized on 27.06.2020 according to Hindu rites and rituals, without any dowry and the averments made in the F.I.R. are false and fabricated. Only general allegations have been levelled in the First Information Report regarding demand of additional dowry and cash in the form of Motorcycle and Rs. 1 lakh cash from the deceased or her parents. The entire allegations are false and fabricated and the First Information Report was lodged after consulting with a legal expert and on the pressure created by the family members. It was further argued by learned counsel for the applicant that prior to the present First Information Report no any application or complaint or First Information Report was lodged against the applicant or his any other family member regarding the demand of additional dowry or motorcycle or any

kind of item in the form of dowry or causing cruelty. The present First Information Report had been lodged only when the deceased, who is wife of the applicant, committed suicide by hanging herself in the room. It has also been submitted by the learned counsel for the applicant that the marriage of the applicant and the deceased was a love marriage and their relations were cordial, however, parents of the deceased were not happy with the marriage, as the marriage was a love-marriage and they were not interested to solemnize marriage of the deceased with the applicant and always comments were passed by them on the deceased for the purpose that she had solemnized marriage with the applicant, because of this reason the deceased was living under constant pressure and stress and, ultimately, on the date of the incident she locked herself inside the room and committed suicide by hanging herself. The dead-body of the deceased was brought down after breaking open the door, which was locked from inside.

7. Learned counsel for the applicant submits that the inquest was conducted on the same day and thereafter the postmortem was conducted and as per the postmortem report the cause of death of the deceased is 'Asphyxia as a result of ante-mortem hanging'. Except one ligature mark of size 22.0 c.m. x 1.0 c.m. there is no other injury found on the person of the victim. In support of his argument that deceased committed suicide by hanging herself, the learned counsel for the applicant placed reliance upon the extract of Modi's Medical Jurisprudence, wherein definition of hanging has been described. Learned counsel for the applicant submits that since the definition of 'Hanging' given in Modi's Jurisprudence and the postmortem-report of the deceased are identical, it appears a case of committing suicide by hanging. He further submits that as per the Modi's Jurisprudence and as per the post-mortem report of the deceased, it is a case of hanging and not the murder or strangulation.

8. Learned counsel for the applicant further submits that as the marriage of the applicant and the deceased is a love-marriage, thus, no question arises for any dowry or any further demand of dowry in the form of motorcycle or cash of Rs. 1 lac. In the present F.I.R. alongwith the applicant, his father, mother and elder brother were also named and only general allegations have been levelled against all the named persons in the F.I.R. regarding demand of additional dowry and causing cruelty.

9. It was further submitted by learned counsel for the applicant that besides the applicant, his father, mother, elder brother and elder brother's wife (Bhabhi) were also roped in the First Information Report, however, in the investigation, name of the

elder brother of the applicant was dropped by the investigating officer, as no material was found against him; father of the applicant, namely Om Prakash Vishwakarma, against whom same allegations were levelled, has been granted bail by this court vide order dated 20.10.2022 passed in Criminal Misc. Bail Application No. 12153 of 2022; mother of the applicant, namely Susheela Devi, was granted bail by the trial court itself vide order dated 08.11.2022 passed in Bail Application No. 2833 of 2022, thus, it is submitted that the case of the present applicant, who is husband of the deceased, is not on the worst footing than that of the co-accused, who were named along with the applicant in the First Information Report, who have been granted bail on same allegations. It is further submitted that the allegations are general and common against all the accused persons and no specific allegation has been made against the applicant, thus, this bail-application of the applicant may be considered by this court sympathetically and he should be released on bail.

10. 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 accused 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 accused is not having any criminal history, which has been explained in para 31 of the affidavit filed in support of the bail application and the applicant is in jail since 25.04.2022 and has by now done a substantial period of incarceration, therefore, the bail application of the applicant may also be considered by this Court sympathetically and she should also be released on bail.

11. In support of his contention, learned counsel for the applicant has placed reliance on Hon'ble Apex Court judgment in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the appellant on

conditions as may be imposed by the District and Sessions Judge, Faridabad."

12. Thus, he submits that the ratio of law as applied by Hon'ble the Apex Court in the Case of **Kamal (supra)** is also applicable in the case of the present applicant, as he also has undergone a substantial period of detention.

13. Learned A.G.A. opposed the prayer for bail and submitted that the case of the other co-accused named in the F.I.R. is distinguishable from the present applicant, who is husband of the deceased and his responsibilities are of higher degree, thus, this bail application be rejected.

14. 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, in particular, the fact that cause of death is 'Asphyxia due to antemortem hanging; Except one injury of legature mark, no other injury found on the body; and considering that there is no eye-witness to *prima facie* indicate the complicity or involvement of the applicant as well as further considering that the identical and similarly circumstanced other co-accused, namely, Om Prakash (father), and Susheela Devi alias Usha (mother), charged with similar allegations, have already been granted bail by this court and the trial court; the trial is not likely to be concluded in near future due to heavy pendency of criminal cases and 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 **Kamal (supra)**, and **Dataram Singh v. State of U.P. & anr.**, reported in **(2018) 3 SCC 22**, this Court is of the view that the applicant may be enlarged on bail.

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

16. Let the applicant- **Ajay Vishwakarma S/o Om Prakash Vishwakarma**, involved in Case Crime No.147 of 2022, under Sections 498A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Kandhai, District Pratapgarh, be released 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 during trial, 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, 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.

(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.

17. 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.

18. 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 merits of the case.

(Shamim Ahmed, J.)

Order Date :- 9.7.2024/A.Nigam