

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3538 of 2025

Applicant :- Yamin

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammad Wadood, Mohd. Samiuzzaman Khan

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Mohd. Samiuzzaman, assisted by Mr. Mohammad Wadood, the learned counsel for applicant, the learned A.G.A. for State and Mr. Dinesh Kumar Mihsra, Advocate, who has put in appearance on behalf of first informant by filing his vakalatnama today in Court which is taken on record.

This third bail application has been filed by applicant-Yamin seeking his enlargement in Case Crime No. 0231 of 2023, under section 498-A, 304-B, IPC and Section 3/4 D.P. Act, Police Station- Tanda, District Rampur during pendency of trial i.e. Sessions Trial No. 264 of 2023 (State Vs. Yusuf and others) under sections 498A, 304B, 3/4 D.P. Act, Police Station- Tanda, District Rampur, now pending in the Court of Additional District Judge/F.T.C., Rampur.

The first bail application of applicant was rejected by this court by a detailed order dated 18.12.2023, passed in Criminal Misc. Bail Application No. 51969 of 2023 (Smt. Asma Vs. State of U.P.) along with Criminal Misc. Bail Application No. 34388 of 2023 (Yamin Vs. State of U.P.).

Thereafter applicant filed his repeat application for bail, which was registered as Bail Application No. 21155 of 2024 (Yamin Vs. State of U.P.). The same was also came to be rejected by this Court vide order dated 29.5.2024. For ready reference the order dated 29.5.2024 is reproduced herein under :

"Heard Mr. Deepak Kumar Pal, the learned counsel for applicant and the learned A.G.A. for State. Mr. Dinesh Kumar Mishra, Advocate, who has put in appearance by filing his vakalatnama today in Court.

Perused the record.

This repeat application for bail has been filed by applicant seeking his enlargement on bail in Case Crime No. 0231 of 2023, under section 498A, 304B IPC and Section 3/4 D.P. Act, Police Station- Tanda, District-Rampur.

The first bail application of applicant was rejected by this Court by a detailed order dated 18.12.2023, passed in Criminal Misc. Bail Application No. 51969 of 2023 (Smt. Asma Vs. State of U.P), connected with Criminal Misc. Bail Application No. 34388 of 2023 (Yamin Vs. State of U.P). For ready reference, the same is reproduced herein under:

"Heard Mr. Brijesh Kumar Pandey, the learned counsel for applicant, the learned A.G.A. for State and Mr. Dinesh Kumar Mishra, the learned counsel representing first informant.

These applications for bail have been filed by applicants Smt. Asma and Yamin seeking their enlargement on bail in Case Crime No. 0231 of 2023, under Sections 498A, 304B IPC and Sections 3/4 D.P. Act, P.S. Tanda, District Rampur, during the pendency of trial.

Perused the record.

Record shows that marriage of Yusuf, son of applicant was solemnized with Farzana on 25.2.2023. However, just after expiry of a period of three months and 25 days from the date of marriage of the son of applicants, an unfortunate incident occurred on 02.06.2023, in which Farzana, daughter-in-law of applicant is alleged to have consumed some poisonous substance. It is alleged that victim was taken to hospital, but she ultimately succumbed to the poisonous substance consumed by her.

According to the learned A.G.A. as per the viscera report of the deceased dated 28.7.2023, a foreign chemical compound namely Organo chloro insecticide was found in the body parts of the deceased sent for chemical examination.

However, no information regarding the death of the deceased was either given at the concerned police station in terms of Section 174 Cr. P. C., nor to the family members of the deceased. The information regarding the occurrence was given by Mohammad Sahid (brother of the deceased). On the above information, the inquest (panchayatnama) of the body of the deceased was conducted. In the opinion of witnesses of inquest (panch witnesses), the nature of death of the deceased could not be categorized, i.e. whether it is homicidal or suicidal nor the cause of death of the deceased could be specified. In the opinion of panch witnesses, the death of the deceased has occurred on account of unknown reasons.

After the proceedings of inquest had been undertaken, an F.I.R. dated 2.6.2023 was lodged by first informant Mohammad Sahid (brother of the deceased) and was registered as Case Crime No. 0231 of 2023, under Sections 498A, 304B IPC and Sections 3/4 D.P. Act, P.S. Tanda, District Rampur. In the aforesaid F.I.R., nine persons namely Yusuf (husband), Smt. Asma (mother-in-law), Yamin (father-in-law), Yaqub (jeth), Smt. Nisha (jethani) Farzana (nand), Kausar Jahan (nand), Sawana (nand) and Ashim Tahera (devar) of the deceased have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. apart from the fact regarding the marriage of the sister of the first informant and description thereof is that additional demand of dowry by way of an Alto car and Rs. 5 lac was raised persistently. As the said additional demand of dowry was not fulfilled, cruelty was committed upon the sister of the first informant. Consequently sister of the first informant was put to death by the named accused. The same is also established from the fact that injuries were found

on the body of the deceased.

After above mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr. P. C. The post-mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased could not ascertained and therefore, viscera was preserved. However, the Autopsy Surgeon found following ante mortem injuries on the body of the deceased:-

(1) Abrasion Rt. side of just below the right eye 2.5 x 2.8 cm Blackish in colour.

(2) Multiple Abrasion over the rt side of chest 04 x 03 cm 4 cm below the rt nipple

(3) Abrasion on 1.5 cm x 01 cm over the rt side of the chest 5 cm below the nipple reddish in colour

(4) No mark of any other external injuries seen all over the body.

During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr. P. C. Witnesses so examined have supported the F.I.R. On the basis of above and other material collected by the Investigating Officer, he came to the conclusion that complicity of only three of the named accused i.e. Yusuf (husband), Asma (mother-in-law) and Yamin (father-in-law) of the deceased is established in the crime in question. He, accordingly, submitted the charge sheet dated 2.8.2023, whereby aforementioned named accused have been charge sheeted under Sections 498A, 304 B IPC and Sections 3/4 D.P. Act, whereas the other named accused have been exculpated.

Learned counsel for applicant contends that though applicants are father-in-law and mother-in-law of deceased, named and charge sheeted accused, yet they are liable to be enlarged on bail. The deceased was a short tempered lady and she has taken the extreme step of committing suicide by consuming Organo Chloro Insecticide. The bona fide of the applicants is further explicit from the fact that no external ante mortem injury was found on the body of deceased. As such, prima facie the death of the deceased is a suicidal death. In view of above, the applicants are not liable to be awarded the maximum sentence for an offence under Section 304-B IPC in case they are convicted. Applicants cannot be said to be the beneficiaries of the alleged demand of dowry. The son of the applicant i.e. husband of the deceased is already languishing in jail. Applicant Smt. Asma is the mother-in-law of the deceased. She being a lady is, therefore, entitled to the benefit of the provisions contained in proviso to Section 437 Cr. P. C. Even otherwise, applicants are of clean antecedents having no criminal history to their credit except the present one. Applicants Smt. Asma and Yamin are in jail since 7.7.2023. As such, they have undergone more than 5 months of incarceration. The police report in terms of 173 (2) Cr. P. C. has already been submitted, therefore, the evidence sought to be relied upon by the prosecution against applicants stands crystallized. However, upto this stage, no such circumstance has emerged on record necessitating the custodial arrest of the applicants during the pendency of trial. It is thus urged that applicants be released on bail. In case, applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. and the learned counsel for first informant have opposed the present application for bail. They submit that since the applicants are named and charge sheeted accused, therefore, they do not deserve any indulgence by this Court. The deceased was a young lady aged about 22 years and she has died in a suspicious circumstance, the death of the deceased has occurred within seven years of her marriage and applicants being inmates of

the house, where the occurrence has taken place since the applicants are mother-in-law and father-in-law of the deceased, therefore burden is upon them to not only explain the manner of occurrence but also innocence in terms of Sections 106 and 113 B of the Evidence Act, it shall be presumed as a dowry death. However, applicants have failed to discharge the said burden upto this stage. Moreover, deceased has committed suicide just after expiry of a period of three months and 25 days from the date of marriage of son of applicant. It is thus contended that no sympathy be shown by this Court.

When confronted with above, the learned counsel for applicants contends that irrespective of above since the applicant Asma is a lady, therefore, she is entitled to the benefit of proviso to Section 437 Cr. P. C.

Having heard the learned counsel for applicant, the learned A.G.A. for state, the learned counsel for first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that applicant Smt. Asma is a lady, therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr. P. C., the police report in terms of 173 (2) Cr. P. C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, however, upto this stage, no such circumstance has emerged on record necessitating the custodial arrest of the applicant Smt. Asma during the pendency of trial, the clean antecedents of the applicant, the period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the bail application of applicant Smt. Asma, but without expressing any opinion on the merits of the case, the applicant Smt. Asma has made out a case for bail.

Accordingly, the bail application of applicant Smt. Asma is allowed.

Let the applicant Smt. Asma involved in aforesaid case crime number, be released on bail on her furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice :-

(i) The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the date 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 her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under section 229-A I.P.C..

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure her presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against her, in accordance with law, under section 174-A I.P.C.

(iv) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 her in accordance with law.

(v) The trial court may make all possible efforts/endeavour and try to conclude

the trial within a period of one year after the release of the applicant. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on her bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

So far as bail application of applicant Yamin is concerned, the Court finds that applicant is the father-in-law of deceased, the death of the deceased has occurred just after expiry of 3 months and 27 days from the date of marriage of the son of applicant, there is no explanation regarding the manner of occurrence or the innocence of applicant, therefore, irrespective of the varied submissions urged, it is, hereby, rejected. "

Learned counsel for applicant contends that applicant is in jail since 7.7.2023. He has then invited attention of the Court to the statement of independent witness to demonstrate the innocence of applicant. On the above conspectus, it is thus urged that the applicant is liable to be enlarged on bail.

Per contra, the learned A.G.A. and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that deceased is daughter in law of applicant who died just after 25 days from the date of her marriage. As such, the death of the deceased is highly unnatural. Considering the nature and gravity of offence, the period of incarceration undergone by applicant, is by itself not so sufficient so as to enlarge the applicant on bail. With regard to the second ground, they contend that same can hardly be said to be a new ground. It is thus urged that since no new, good or sufficient ground has been made out to enlarge the applicant on bail, as such, this repeat application for bail is liable to be rejected. When confronted with above, the learned counsel for applicant could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that objections raised by the learned A.G.A. in opposition to the present repeat application for bail could not be dislodged by the learned counsel for applicant, therefore irrespective of the varied submissions urged by the learned counsel for applicant in support of the present repeat application for bail, but without making any comment on the merits of the case, this Court does not find any new good or sufficient ground to enlarge the applicant on bail.

In view of above, the application fails and is liable to be rejected. It is accordingly rejected. "

Learned counsel for applicant submits that though applicant is father-in-law of deceased, a named and charge sheeted accused yet he is liable to be enlarged on bail. The trial of applicant has already commenced before Court below. In the charge sheet/police report so submitted by Investigating Officer in terms of Section 173(2) Cr.P.C, 16 prosecution witnesses have been nominated therein. Out of aforesaid, 16 prosecution witnesses so nominated, 4 prosecution witnesses are witnesses of fact. They have already deposed before Court below. He, therefore, contends that since all the prosecution witnesses of fact have deposed before Court below, therefore, in case the applicant is enlarged on bail, then in that eventualirty it cannot be said that appicant shall either terrorize the witness or

shall hamper the course of trial. It is however, contended that except for P.W.1 i.e. first informant, all other prosecution witnesses of fact have not supported the prosecution story, as unfolded in the F.I.R. It is further contended by the learned counsel for applicant that as per the F.S.L report, copy of which is on record at page 104 of the paper book, a foreign chemical compound namely, Organo chloro Insecticide was found in the body of prosecutrix. On the aforesaid premise, it is contended that death of deceased is homicidal and not a suicidal death. Applicant is father-in-law of the deceased and an old man aged about 67 years. He cannot be said to be the beneficiary of the alleged demand of dowry. With reference to the provisions contained in proviso to section 437 Cr.P.C. he contends that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 7.7.2023. As such, he has undergone more than one year and seven months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized. However, upto this stage no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed this third application for bail. They submit that since applicant is father-in-law of the deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The death of the deceased has occurred in unnatural circumstances and just after three months and 25 days from the date of marriage. In view of above, no indulgence be granted by this Court in favour of applicant. It is further contended that P.W.1 has fully supported the F.i.R. On the aforesaid conspectus, learned A.G.A. contends that no sympathy be shown by this Court in favour of applicant.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, as well as complicity of applicant, accusation made coupled with the fact that applicant is father-in-law of the deceased, applicant is an old man aged about 67 years, by reason of above, applicant is clearly entitled to the benefit of the provisions contained in proviso to section 437 Cr.P.C., the police report in terms of Section 173 (2)

Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized, as per the charge sheet/police report, 16 prosecution witnesses have been nominated therein, out of the aforesaid 16 witnesses, 4 witnesses of fact have deposed before Court below, except for first informant, the other three prosecution witnesses of fact have not supported the prosecution story, prima facie applicant who is the father in law of deceased cannot be said to be beneficiary of the alleged demand of dowry, the clean antecedents of applicant, the period of incarceration undergone, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail, but without making any comment on the merits of the case, applicant has made out a case for bail. Accordingly, the bail application is **Allowed**.

Let the applicant **Yamin**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 7.2.2025

Arshad