



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 7028 of 2025

Waseem @ Sonu

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	: Mohammad Zakir, Prateek Srivastava
Counsel for Opposite Party(s)	: G.A.

Court No. - 47

HON'BLE RAJEEV MISRA, J.

1. Heard Mr. Amit Kumar, Advocate, holding brief of Mr. Prateek Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed applicant Waseem @ Sonu seeking his enlargement on bail in Case Crime No. 508 of 2021, under sections 498A, 304B, 313, 323 IPC, and 3/4 D.P. Act, Police Station- Garhmukhteshwar, District Hapur during the pendency of trial.

4. The first bail application of applicant was rejected by this Court by a detailed order dated 9.12.2022 passed in Criminal Misc. Bail Application No. 53902 of 2022 (Waseem @ Sonu Vs. State of U.P.). For ready reference, the same is reproduced herein under:-

"Heard Mr. Mohammad Zakir, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed applicant Waseem @ Sonu seeking his enlargement on bail in Case Crime No. 508 of 2021, under sections 498A, 304B, 313, 323 IPC, and 3/4 D.P. Act, Police Station- Garhmukhteshwar, District Hapur during the pendency of trial.

Perused the record.

Record shows that marriage of applicant was solemnized with Naseema on 16.9.2020 in accordance with Muslim Rites and Customs. After expiry of a period of one year from the date of marriage of applicant, an unfortunate incident occurred

on 17.9.2021, in which wife of applicant had to undergo immediate surgery. It is apposite to mention here that wife of applicant was in family way, on account of conduct of family members, the wife of applicant gave birth to an undeveloped child, prematurely.

After about nine days from the incident which occurred on 17.9.2021, an F.I.R. dated 20.9.2021 was lodged by mother of the deceased, which was registered as Case Crime No. 508 of 2021, under sections 498A, 377, 323, 313 IPC, and Section 3/4 D.P. Act, Police Station- Garhmukhteshwar, District Hapur. In the aforesaid F.I.R. Waseem @ Sonu (husband), Shehnwaz (mother-in-law), Ayyub, (father-in-law), Najrin (Nanad), Haji (Akil) have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that marriage of daughter of first informant was solemnized with applicant Waseem @ Sonu on 10.9.2020, in accordance with Muslim Rites and customs. Applicant and other family members were dissatisfied with the amount of goods and dowry given to the wife of applicant at the time of her marriage. Additional demand of dowry i.e. Rs. 5,00,000/-. lakhs and a car was made. As demand of additional dowry was not fulfilled physical and mental cruelty was committed upon the daughter of first informant. She was assaulted and she was dropped at the bus stand. On account of conduct of applicant and other family members, the daughter of first informant had to undergo surgery and the embryo got aborted.

After lodging of aforesaid F.I.R. Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. During course of investigation, Investigating Officer examined first informant and other witnesses under section 161 Cr.P.C. During pendency of investigation, wife of applicant died on 6.10.2021. Subsequently, Section 304 B was added. The information regarding death of deceased was given by mother of deceased herself at the concerned Police Station. The inquest (panchayatnama) of deceased was conducted on the aforesaid information on 6.10.2021. In the opinion of witnesses of inquest (panch witnesses), the nature of death of deceased was said to be homicidal. Thereafter the post mortem of the body of the deceased was conducted. The Doctor who conducted autopsy on the body of deceased found following ante-mortem injuries on the body of deceased:

- (1) Contusion Blue size 6.01 cm x 3.0 cm. present on Rt. Fore Arm anteriorly 16.0 cm above wrist*
- (2) 4.0 cm x 3.5 cm... blue present on arm anteriorly 3.0 cm above elbow.*
- (3) Contused abrasion black..... dorsal of Rt. Hand involving writ of.....*
- (4) 3.0 cm x 2.0 cm contusion present on Rt. Face just below on eye.*

In the opinion of autopsy surgeon, the cause of death of deceased was septicaemia and shock.

Investigating Officer thereafter examined other witnesses including the Doctor namely, Dr. Aneeta Tyagi. This witness in his statement has stated that death of the child occurred on account of injuries sustained by him due to assault committed upon mother of the child i.e. wife of applicant. The Doctor who conducted autopsy on the body of deceased Vinod Yadav was also examined. In the opinion of this witness, cause of death of deceased was septicaemia and shock.

Learned counsel for applicant submits that though the applicant is husband of deceased, named as well as charge sheeted accused, but he is innocent. The death of deceased has not occurred on account of an immediate act of applicant but on account of septicaemia and shock as is evident from post mortem report as well as statement of autopsy surgeon, i.e Doctor Vinod Yadav. He, therefore submits that in view of above, criminality alleged against applicant is not made out.

It is next contended that 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 26.5.2022. As such, he has undergone more than six months of incarceration. In case 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 has opposed this application for bail. Learned A.G.A. has invited attention of Court to the statement of the Doctor Namely, Aneeta Tyagi. He submits that complications were developed by deceased on account of assault by named and charge-sheeted accused ultimately, resulting in the death of pre mature child. He submits that in view of clinching evidence applicant who is husband of deceased does not deserve any indulgence by this Court. Presumption is under section 113 B of Indian Evidence Act, that since death of deceased has occurred within a period of seven years from the date of marriage, there is statutory presumption that the death of deceased is dowry death. Attention of the Court has also invited to Section 106 of Indian Evidence Act. It is urged by learned A.G.A. that since occurrence of assault was occurred in the house of applicant, resulting in the death of embryo in womb of deceased, applicant being inmate of deceased by virtue of section 113 B of Indian Evidence Act, however, said burden has also not been discharged, applicant does not deserve any indulgence by this Court. He submits that on account of named/charge sheeted accused, injury was sustained by the wife of applicant. On account of above, the wife of applicant gave birth to an undeveloped child prematurely. Ultimately, the premature child died on account of the injuries sustained by the mother. Learned A.G.A. thus submits that in view of aforesaid clinching evidence, applicant does not deserve any indulgence by this Court. Learned A.G.A. then submits that upto this stage applicant has been able to rebut the statutory presumption in lieu of section 113 B nor the burden under

section 106 of the Evidence Act has been dislodged. As such, applicant does not deserve any sympathy of this Court.

When confronted with above, 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, as well as complicity of applicant, accusation made coupled with the fact that as per statement of Doctor Aneeta Tyagi examined under section 161 Cr.P.C. the deceased gave birth to premature child on account of assault committed upon her, the child having died on the next day, the occurrence in question having been occurred just after expiry of period of one year and one day, the burden under section 113B and 106 of Evidence Act having not been discharged, but without making any comment on the merits of the case, this Court does not find any good ground to enlarge the applicant on bail.

As a result, present application fails and is liable to be rejected.

It is accordingly rejected."

5. Applicant-Waseem @ Sonu has now approached this Court by filing present repeat application for bail.

6. Learned counsel for applicant submits that though applicant is the husband of deceased, a named as well as charge sheeted accused and facing trial under incarceration, however, irrespective of above and in view of the facts as have now crystallized on record, applicant is liable to be enlarged on bail. Elaborating his aforesaid submission, the learned counsel for applicant first invited the attention of Court to the post mortem report of the deceased and on basis thereof, he submits that the deceased had not sustained any grievous or fatal injury. It is unfortunate that irrespective of above, the deceased ultimately died. It is further contended by the learned counsel for applicant that the trial of applicant has already commenced before Court below by way of Sessions Case No. 74 of 2022 (State Vs. Ayyub and Others), under Sections 498A, 304-B, 323, 313, 317 IPC and Sections 3/4 of the DP Act. In spite of the fact that a period of more than 3 years has rolled by as the committal order was passed by the jurisdictional Magistrate on 04.02.2022 yet the trial of applicant has not concluded till date. IT is thus contended that since applicant is in jail, therefore, he cannot be held responsible for the delay in conclusion of trial. According to the learned counsel for applicant, up to this state, 6 prosecution witnesses of fact have deposed before Court below. Since the statement of first informant has

already been recorded, therefore, in case, applicant is enlarged on bail then in that eventuality, it cannot be said that applicant shall either terrorize the witnesses or shall hamper the course of trial. As such, no good or justifiable ground now exists to prolong the custodial arrest of applicant during the pendency of trial. The minimum sentence provided for an offence under Section 304-B IPC is 7 years and applicant has already undergone 3 years and 4 months of incarceration. On the above premise, the learned counsel for applicant contends that applicant is liable to be enlarged on bail.

7. 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 26.5.2022. As such, he has undergone more than three years and four 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 applicant stands crystalized. Moreover, six prosecution witnesses have deposed before Court below. However, in spite of above, no such incriminating circumstance has emerged on record warranting custodial arrest of applicant during the pendency of trial. In support of aforesaid submission, reliance has been placed upon the judgment of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373**. It is thus urged by the learned counsel for applicant that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail then in that eventuality, he shall not misuse the liberty of bail and shall co-operate in the conclusion of trial.

8. Per contra, the learned A.G.A. has vehemently opposed the present application for bail. He submits that since applicant is named as well as charge sheeted accused and under incarceration, therefore, he does not deserve any indulgence by this Court. Applicant is husband of deceased. Referring to the order passed by this Court on the first bail application of applicant, the learned A.G.A. contends that the Doctor who conducted the autopsy on the body of the deceased has found four ante-mortem injuries on his person. The deceased is wife of applicant. It is next contended that death of deceased has occurred within seven years of marriage. By virtue of provisions contained in Section 113 (B) of Evidence Act, there is a statutory presumption that death of deceased is dowry death. However, up to this stage, no explanation has come forward in rebuttal of the aforesaid statutory presumption. It is then urged by the learned A.G.A. that the occurrence

giving rise to the present criminal proceedings has occurred in the house of applicant. Consequently, by reason of Section 106 of the Evidence Act, the burden is upon the applicant to explain the manner of occurrence. However, the same does not stand explained by applicant up to this stage. It is thus urged by the learned A.G.A. that no new, good or sufficient ground has emerged so as to enlarge the applicant on bail during the pendency of trial. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by learned counsel for applicant with reference to the record at this stage.

9. Having heard the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, upon perusal of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant and considering the submissions urged by the learned counsel for applicant as noted herein above, coupled with the fact that no such distinguishing circumstance has emerged on record so as to deny bail to the applicant, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to present repeat application for bail, but without making any comments on the merits of the case, applicant/appellant has made out a case for bail.

10. As a result, the present application for bail succeeds and is liable to be **allowed**.

11. It is, accordingly, **allowed**.

12. Let the applicant- **Waseem @ Sonu**, 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.

13. 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.

October 10, 2025
Arshad

(Rajeev Misra,J.)