

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27529 of 2020

Applicant :- Ram Pyari

Opposite Party :- State of U.P.

Counsel for Applicant :- Jitendra Singh, Manvendra Singh, Rajesh Kumar, Saurabh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Saurabh Yadav, the learned counsel for applicant and the learned A.G.A. for State.

This third bail application has been filed by applicant Ram Pyari, seeking her enlargement on bail in Case Crime No. 139 of 2018, under sections 498-A, 304-B- 506 IPC and 3/4 D.P. Act, Police Station- Malwa, District- Fatehpur.

The first bail application of the applicant was rejected by this Court vide order dated 27.11.2018, passed in Criminal Misc. Bail Application No. 42587 of 2018 (Ram Pyari Vs. State of U.P.). The same is reproduced herein under:

"Heard Mr. Jagmohan Singh, learned counsel for the applicant, the learned A.G.A. for the State and Mr. Sanjay Srivastava, learned counsel for the complainant.

Perused the record.

This bail application has been filed by the applicant Ram Pyari, seeking her enlargement on bail in Case Crime No. 139 of 2018 under Sections 498A, 304B IPC and 3/4 D.P. Act, P.S. Malwan, District Fatehpur during the pendency of the trial.

From the record, it appears that the marriage of the son of the applicant namely Vivek Singh was solemnized with Archana Devi on 25.5.2015. After the expiry of a period of two years and eleven months from the date of marriage of the son of the applicant, an unfortunate incident occurred on 17.5.2018, in which the daughter-in-law of the applicant sustained deep and superficial burn injuries. It is the case of the applicant that after the occurrence had taken place, the victim was taken to the District Hospital, Fatehpur, where she was administered first aid and was referred to District Hospital at Kanpur. Accordingly, the victim was got admitted at L.L.R. Hospital Kanpur on 17.5.2018 by the husband. The treatment of the victim continued from 17.5.2018 till 1.6.2018 at the aforesaid hospital. The dying declaration of the victim was recorded on

18.5.2018, which is on the record at page 6 of the supplementary affidavit. The statement of the victim under section 161 Cr.P.C. was recorded on 19.5.2018, which is on the record at page 38 of the paper book. Ultimately, the victim succumbed to her injuries on 1.6.2018. The F.I.R. in respect of the aforesaid incident was lodged on 17.5.2018, which was registered as Case Crime No. 139 of 2018 under Sections 498A, 326, 506 IPC and Section 3/4 D.P. Act, P.S. Malwan, District Fatehpur. In the aforesaid F.I.R., eight persons namely, Vivek Singh (husband), Ram Singh (father-in-law), Ram Pyari (mother-in-law), Brijendra Singh (Jeth), Rama Devi (Jethani), Rishabh Singh (Bhatija), Sima Devi, Meena Devi (Nand) of the deceased were nominated as the named accused. Information of the death of the deceased was given by the ward boy of the hospital to the concerned Police Station. The inquest of the body of the deceased was conducted on 1.6.2018. In the opinion of the Panch witnesses, no definite opinion could be given regarding the cause of death of the deceased. The post mortem of the body of the deceased was conducted on 1.6.2018. The Doctor, who conducted the autopsy on the body of the deceased opined that the cause of death of the deceased was shock and septicemia due to ante-mortem burn injuries. The Doctor further noted that the deceased had sustained superficial to deep bone burn injuries all over the body except the whole of the back and left top of the shoulder. Thereafter the Investigating Officer on 5.6.2019 converted the case under section 304 B IPC. Accordingly, the charge-sheet dated 25.9.2018 was submitted against the husband, father-in-law and the mother-in-law of the deceased under section 498A, 304B IPC and Section 3/4 D.P. Act. Learned counsel for the applicant orally submits that subsequent to the submission of the charge sheet, cognizance has been taken by the Court concerned and thereafter the case was committed to the Court of sessions. However, he is unable to take details of the same.

Learned counsel for the applicant submits that the applicant is the mother-in-law of the deceased but she is innocent. The applicant is in jail since 13.7.2018. The applicant has no criminal antecedents to her credit except the present one. The deceased had died on account of accidental fire and not on account of any deliberate act of applicant. It is further submitted that the applicant was residing separately from the family of the deceased and in support thereof, reliance is placed upon the Adhar Card of the deceased, photo copy of which is Annexure-3 to the affidavit. On the basis of the Adhar Card of the applicant, it is urged that the place of occurrence is situate 12 kms. away from the residence of the applicant and therefore the applicant cannot be said to have even abetted in the commission of the crime. On the aforesaid factual premise, it is urged that the present applicant is liable to be enlarged on bail. Per contra, the learned A.G.A. and learned counsel for the complainant namely Sanjay Srivastava have opposed the prayer for bail. They have invited the attention of the Court to the dying declaration of the deceased dated 18.5.2018, photo Copy of which is on the record as Annexure- SA1 to the supplementary affidavit filed by the learned counsel for the applicant today in Court. Inviting the attention of the Court to the contents of the dying declaration, it is urged that the deceased has specifically nominated the present applicant in the commission of Crime, inasmuch as the act of pouring kerosene has specifically been assigned to

the present applicant. The dying declaration has further been supported by the statement of the deceased recorded by the Investigating Officer under section 161 Cr.P.C. on 19.5.2018. It is next submitted that the deceased is the daughter-in-law of the applicant and there is no such material up to this stage on the basis of which the post-mortem report as well as dying declaration or the statement of the deceased recorded under section 161 Cr.P.C. could be doubted or lead to infer that the death of the deceased has occurred on account of accidental fire. On the aforesaid factual premise, it is urged that the bail application of the applicant is liable to be rejected.

Having considered the submissions made by the learned counsel for the applicants, the learned A.G.A. for the State and the learned counsel for the complainant and upon perusal of the material brought on the record and the complicity of the applicants but without making any comments on the merits of the case, I do not find any good reason to exercise my discretion in favour of the accused applicant. Thus, the bail application of the present applicants stands rejected.

However, the trial court is expected to gear up the trial of the aforesaid case and conclude the same within a period of six months from the date of production of a certified copy of this order, in accordance with law, without granting any unnecessary adjournment to either of the parties, provided the applicant fully cooperates in conclusion of the trial, if there is no other legal impediment.

Office is directed to transmit a certified copy of this order to the court concerned within a fortnight. "

Thereafter applicant filed her repeat application for bail which also came to be rejected vide order dated 11.2.2020, passed in Criminal Misc. Bail Application No. 45221 (Ram Pyari Vs. State of U.P.). The same is accordingly extracted herein under:

"Supplementary affidavit filed in Court today, is taken on record.

Heard MR. Bijai Nath Yadav, learned counsel for the applicant, learned A.G.A. representing opposite party No. 1.

This second application for bail has been filed by applicant Ram Pyari seeking her enlargement on bail in S.T. No. 289 of 2018, arising out of case crime no. 139 of 2018 (State Vs. Vivek Singh and others) under Sections 498A, 304B, 506 IPC and 3/4 Dowry Prohibition Act, P.S. Malwa, District-Fatehpur during pendency of above mentioned trial.

First bail application of applicant was rejected by a detailed order dated 27.11.2018. This Court while rejecting the first bail application of the applicant considered the dying declaration of the deceased, in which the deceased has clearly nominated present applicant in the criminality committed upon her.

Learned counsel for applicant invited the attention of the Court to the statement of father of the deceased namely Bansidhar, wherein he has

stated that on account of influence of his son, the deceased has given dying declaration referred to above. He, therefore, submits that in the aforesaid circumstances, dying declaration cannot be relied upon and therefore, the applicant who is a lady aged about 64 years is liable to be released on bail.

Per contra, learned A.G.A. opposed the prayer for bail. He submits that ground urged by learned counsel for applicant in the second bail application was available to the learned counsel for applicant at the time of hearing of first bail application, but the same was not raised. He further submits that occurrence has taken place outside the kitchen. He lastly submits that even though occurrence has taken place in the house of the applicant, no explanation has been given as to how the occurrence took place. Therefore, in view of the circumstances noted above and the testimony of the father of the deceased recorded under Section 161 Cr. P. C., the credibility of the dying declaration of the deceased cannot be doubted, therefore, he submits that no new or good ground is made out for enlargement of the applicant on bail.

Having heard learned counsel for applicant and learned A.G.A. representing opposite party No. 1 and upon perusal of material available on record, I do not find any new or good ground to enlarge the applicant on bail. Bail application is, accordingly, rejected.

Considering the fact that the applicant is an old lady aged about 64 years and prosecution is delaying the trial on account of non co-operation of prosecution witnesses, as is evident from the order sheet, Court below is directed to proceed with the trial with all expedition and without granting any unnecessary adjournment. "

Applicant has now filed this third application for bail seeking her enlargement on bail in above mentioned case crime number during the pendency of trial.

Referring to the provisions contained in proviso to section 437 Cr.P.C. learned counsel for applicant submits that applicant being a lady, aged about 70 years, therefore, she is liable to be enlarged on bail. It is then contended by the learned counsel for applicant that trial of applicant commenced in the year 2018 and inspite of the fact that a period of almost 7 years has rolled by, the trial of applicant has not yet concluded. Since applicant is in jail, therefore, she cannot be held responsible for delay in the progress/conclusion of trial. Referring to the judgement of Supreme Court in **A. R. Antulay Vs. R. S. Nayak (1992) 1 SCC 225**, it is urged by the learned counsel for applicant that right to speedy trial is now recognized as a fundamental right of an accused. In view of aforementioned facts, the aforesaid fundamental right of applicant stands infringed.

Even otherwise, applicant has undergone the minimum of the

sentence prescribed for an offence under section 304 B IPC. Learned counsel for applicant has then invited the attention of the Court to the statement of the Tehsildar, P.W.6 who recorded the dying declaration of the deceased. This witness before Court below has stated that no smell of kerosene was coming at the time of dying declaration of the deceased was recorded. As such, the dying declaration has been doubted.

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 13.7.2018. As such, she has undergone more than six years and ten 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 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. Furthermore, since the deposition of first informant and prosecution witness of fact have already been recorded, therefore, in case the applicant is enlarged on bail then in that eventuality it cannot be said that applicant shall either hamper the course of trial or shall terrorize the witnesses. It is thus urged by the learned counsel for applicant that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore she does not deserve any indulgence by this Court. Present case is a case of homicidal death. In short the applicant has failed to discharge the burden in terms of Section 113 (B) of Evidence Act. As such, no new or good ground is made out for enlargement of applicant on bail. However, he could not dispute the facts as noted above and also the factual and legal submissions urged by learned counsel for applicant.

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 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 prosecution against applicant stands crystalized, inspite of above, learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during

pendency of trial, the judgement of Supreme Court in **Sumit Subhaschandra Gangwal and another Vs. The state of maharashtra and Another, 2023 Live law (SC) 373** the statement of the first informant and the prosecution witness of fact have already been recorded, therefore, in that eventuality in case the applicant is enlarged on bail, then it cannot be said that applicant shall hamper the course of trial or shall terrorize the witness, applicant has undergone the minimum of the sentence, as per deposition of PW.6, the very credibility of the dying declaration is in doubt, the period of incarceration undergone, the clean antecedents of applicant therefore irrespective of the objections raised by the learned A.G.A. in opposition to this application. but without making any comment on the merits of the case, applicant has made out a case for bail.

Accordingly, this third bail application is **Allowed**.

Let the applicant **Ram Pyari**, 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 :- 30.5.2025

Arshad