



2025:AHC:158055

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 24611 of 2025

Brijesh Nishad

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Puneet Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 80

HON'BLE RAJEEV MISRA, J.

Heard Mr. Puneet Kumar, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This is third bail application filed by applicant Brijesh Nishad, seeking his enlargement on bail in Case Crime No. 48 of 2021, under sections 498A, 304-B IPC and Section 3/4 D.P. Act, Police Station- Jafarganj, District Fatehpur during the pendency of trial i.e Sessions Trial No. 706 of 2021 (State Vs. Brjesh Nishad), under sections 498A, 304-B IPC and Section 3/4 POCSO Act, Police Station- Jafarganj, District Fatehpur now pending in the Court of Additional Sessions Judge/ Special Judge (EC Act), Fatehpur .

The first bail application of applicant was rejected by this Court vide order dated 16.10.2023 passed in Criminal Misc. Bail Application No. 40067 of 2023 (Brijesh Nishad Vs. State of U.P.). Subsequently, applicant filed his repeat application for bail which also came to be rejected vide order dated 18.7.2024, passed in Criminal Misc. Bail Application No. 24713 of 2014 (Brijesh Nishad Vs. State of U.P.). For ready reference the order dated 18.7.2024 is reproduced herein under:

"1. Heard Mr. Shivakant, 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 by applicant-Brijesh Nishad seeking his enlargement on bail in Case Crime No.48 of 2021 under Sections 498A, 304B I.P.C. and Sections 3/4 D. P. Act. Police Station-Jafarganj, District-Fatehpur during the pendency of trial i.e. Sessions Trial No.706 of 2021 and Sessions Trial No. 571 of 2022 (State Vs. Brijesh Nishad and others) under Sections 498A,

304B I.P.C. and Sections 3/4 D. P. Act. Police Station-Jafarganj, District-Fatehpur now pending in the Court of Additional Sessions Judge/Special Judge, E.C. Act, Fatehpur.

4. The first bail application of applicant was rejected by this Court by a detailed order dated 16.10.2023 passed in Criminal Misc. Bail Application No. 40067 of 2023 (Brijesh Nishad Vs. State of U.P.). For ready reference, the order dated 16.10.2023 is reproduced herein under:

"1. Heard Mr. Sharad Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant Brijesh Nishad seeking his enlargement on bail in Case Crime No. 48 of 2021, under Sections 498A, 304B IPC and Section 3/4 D.P. Act, Police Station- Jafarganj, District Fathpur during the pendency of trial.

4. Record shows that marriage of applicant Brijesh Nishad was solemnized with Karishma on 2.6.2019. However, even before expiry of a period of two years from the date of marriage of applicant, an unfortunate incident occurred on 31.5.2022, in which the wife of applicant died as she committed suicide by hanging herself.

5. The information regarding the aforesaid incident at the concerned Police Station was not given by applicant or any of his family members but by Babu Ram. On the said information, the inquest (panchayatnama) of the body of deceased was conducted on 31.5.2021, In the opinion of witnesses of inquest (panch witnesses), the nature of death of deceased was categorized as suicidal and the cause of death of deceased was said to be hanging.

6. Thereafter, the post mortem of the body of the deceased was conducted. The autopsy surgeon who conducted autopsy of the body of deceased opined that the cause of death of the deceased is asphyxia as a result of ante-mortem strangulation. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"1. Contusion (5x5) cm in Rt. occipital bone.

2. Contusion (3x3) cm in Rt. penal bone

3. Contusion 6x3 cm in (Rt) mid of temporal bone

4. Incomplete ligature mark size 12 x 1 cm present on parietal of both jaw (Lower) and below thyroid cartilage around the ligature margin below from Rt. ear 5 cm from chin 5 cm from Lt. ear 5cm"

7. Subsequent to above, the first informant Deshraj lodged an F.I.R. dated 1.6.2021, which was registered as Case Crime No. 48 of 2021, under Sections 498A, 304B IPC and Section 3/4 D.P. Act, Police Station- Jafarganj, District Fathpur. In the aforesaid incident, three persons namely, Brijesh Nishad, Baburam and Shivkali have been nominated as named accused.

8. After aforementioned F.I.R. was lodged, Investigating officer proceeded with statutory investigation of concerned case crime number in terms of chapter XII Cr.P.C.

9. During course of investigation, Investigating Officer examined first informant and others witnesses under section 161 CR.P.C. Witnesses so examined have substantially supported the F.I.R. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of named accused is established in the crime in question. He, accordingly submitted the charge sheet dated 27.8.2021, whereby all the named accused including applicant have been charge sheeted under sections 498A, 304B IPC and Section 3/4 D.P. Act.

10. Learned counsel for applicant submits that though the applicant is husband of deceased and named as well as charge-sheeted accused, yet he is liable to be enlarged on bail. It is next contended by learned

counsel for applicant that charge sheet was submitted against applicant on 27.8.2021. After submission of aforesaid charge sheet, cognizance was taken upon same by concerned Magistrate. However, as offence complained of is triable by court of Sessions, therefore, concerned Magistrate committed the case to Court of sessions. Resultantly, Sessions Trial No. 706 of 2021 (State of U.P. Vs. Brijesh Nishad and others). Subsequently, another Sessions Trial No. 571 of 2022 (State of U.P. Vs. Brijesh Nishad and others) was also connected with aforesaid trial. However, both the trial was clubbed together. Up to this stage, three prosecution witnesses of fact namely, P.W.1, P.W.2 and P.W.3 have been deposed before Court below. However, the aforesaid witnesses have not supported the F.I.R.

11. 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 31.5.2021. As such, he has undergone more than 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 crystallized. However, upto this stage, no such, 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 trial.

12. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is the husband of the deceased a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. In the opinion of autopsy surgeon, the cause of death of deceased is Asphyxia as a result of ante-mortem strangulation. The death of deceased has occurred at her marital home and within 7 years of her marriage. Therefore, same is dowry death. The death of deceased is highly unnatural. In view of above, learned A.G.A. submits that burden is upon the applicant to not only explain the manner of occurrence under Section 106 but also his innocence under section 113-B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden up to this stage. As such, applicant does not deserve any sympathy of this Court.

13. When confronted with above, the learned counsel for applicant could not overcome the same.

14. 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 the death of deceased has occurred even before expiry of a period of two years from the date of her marriage and at her marital home, therefore, the death of deceased is a dowry death, therefore applicant is under legal obligation to not only explain the manner of occurrence but his innocence, however, up to this stage, applicant has miserably failed to discharge the said burden in terms of Sections 106 and 113B of the Evidence Act, there is nothing on record to infer the innocence of the applicant either, the witnesses P.W.1 and P.W.2, who have deposed before court below, have supported the F.I.R, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

15. In view of above, the application fails and is liable to be rejected.

16. It is accordingly rejected.

Order Date :- 16.10.2023 "

5. Learned counsel for applicant contends that subsequent to the above order dated 16.10.2023, the trial of applicant commenced before court below. Upto this stage, four prosecution witnesses of fact have

deposed before court below i.e. P.W.-1, Deshraj, P.W.-2 Ankit Kumar, P.W.-3, Indra Pal, P.W.-4 Chate Lal. According to the learned counsel for applicant, aforesaid prosecution witness of fact have not supported the F.I.R. On the above premise, he, therefore, submits that applicant is liable to be enlarged on bail. Applicant is in jail since 03.06.2021. As such he has undergone more than 3 years of incarceration. The trial of applicant has already commenced. However, upto this stage only 4 prosecution witnesses of fact have deposed before court below. On the above premise, he contends that there is no possibility of the trial being concluded in near future. He therefore contends that applicant is liable to be enlarged on bail.

6. Even otherwise applicant is a man of clean antecedents inasmuch he has no criminal history to his credit except the present one. Applicant is in custody since 03.06.2021. As such, he has under-gone more than three years of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to relied upon by the prosecution against applicant stands crystallised. Upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. He therefore submits 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.

7. Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that after the deposition of prosecution witness i.e. P.W.-1, P.W.-2, P.W.-3 and P.W.4 was recorded, the court below vide order dated 03.03.2022 has framed alternate charge under Section 302 I.P.C. against charge sheeted accused in exercise of jurisdiction under Section 216 Cr.P.C.. As per the opinion of the Autopsy Surgeon the cause of death of deceased is asphyxia as a result of ante mortem throttling. Since, applicant is the husband of the deceased and the occurrence has taken place in the house of applicant, therefore, by virtue of the provisions contained in Section 106 of the Evidence Act, burden shall be upon applicant himself to explain the manner of occurrence. Upto this stage, there is nothing on record to explain the same. Considering the nature and gravity of offence, the learned A.G.A. contends that no indulgence be granted by this Court in favour of applicant. The aforesaid burden can be discharged by the accused/applicant, only during the course of trial. 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.

8. When confronted with above, the learned counsel for applicant could not overcome the same.

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

10. As a result, present repeat application for bail fails and is liable to be rejected.

11. It is accordingly rejected. "

Now the applicant has filed present third bail application seeking his enlargement on bail during the pendency of trial.

Learned counsel for applicant submits that though the applicant is a named

as well as charge sheeted accused and facing trial before Court below, however in view of fact as have now crystalized on record, applicant is liable to be enlarged on bail during the pendency of trial.

In furtherance of aforesaid submission the learned counsel for applicant submits that up to this stage all the prosecution witness of fact have deposed before Court below. On the above premise, it is thus urged by the learned counsel for applicant/appellant that once the statement of the first informant and other prosecution witnesses have been recorded by Court below, therefore, in case applicant is enlarged on bail then in that eventuality it cannot be said that applicant shall either terrorize the witness or shall hamper the course of trial. It is thus urged by the learned counsel for applicant that no good or sufficient ground now exists so as to prolong the custodial arrest of applicant.

It is then submitted by the learned counsel for applicant/appellant that even otherwise applicant is man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 3.6.2021. As such, he has undergone more than four years and two months of incarceration. The police report in terms of section 173 (2) Cr.P.C has already been submitted and therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. Further the deposition of prosecution witness of fact stands recorded. However, inspite of above up to this stage, no such circumstance has emerged, necessitating the custodial arrest of applicant during the pendency of trial. He, therefore submits that applicant is liable to be enlarged on bail during the pendency of trial. In case the applicant is enlarged on bail, then in that eventuality he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. representing State-Opposite party-1 has opposed the prayer for bail. He submits that no new or good ground has emerged to enlarge the applicant on bail. With reference to the medical evidence on record, the learned A.G.A. submits that the deceased who is wife of applicant has died an unnatural death within seven years of her marriage. The cause of death of deceased in the opinion of autopsy surgeon is strangulation. Consequently, the burden is upon the applicant himself to explain his innocence in terms of Section 113 B and also the manner of occurrence in terms of Section 106 of Evidence Act. However, the said burden has not been discharged as yet . The death has taken place within

seven years, therefore, statutory presumption shall come into existence. Therefore, the death of the deceased is a dowry death. It is thus urged by the learned A.G.A. that no case for grant of bail is made out and the bail application of the applicant 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 so as to enlarge the applicant on bail.

In view of above, this third application for bail fails and is liable to be rejected.

It is accordingly **rejected**.

September 8, 2025
Arshad

(Rajeev Misra,J.)