

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35501 of 2023

Applicant :- Rahul Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Kumar Chaurasiya

Counsel for Opposite Party :- G.A.,Apul Misra

Hon'ble Rajeev Misra,J.

1. Heard Mr. Adarsh Kumar Mishra, Advocate, holding brief of Mr. Ashish Kumar Chaurasiya and Mr. Shailendra Singh, 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-Rahul Mishra, seeking his enlargement on bail in Case Crime No. 264 of 2022, under Sections 498A, 304B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Talgram, District-Kannauj during the pendency of trial.

4. It transpires from record that marriage of applicant Rahul Mishra was solemnized with Kavita on 18.07.2021. However, just after expiry of a period of 1 year and 2 months from the date of marriage of applicant, an unfortunate accident occurred on 13.10.2022, in which the wife of the applicant died as she committed suicide by hanging herself.

5. The information regarding aforesaid incident at the concerned police station was not given by applicant or any of his family members but by the brother of the deceased. On the said information, the inquest (Panchayatnama) of the body of deceased was conducted. In the opinion of witnesses of inquest (Panch witnesses), the nature of death of deceased was characterized as suicidal. Thereafter, the FIR dated 14.10.2022 was lodged by Kuldeep Dixit (brother of the deceased), which was registered as Case Crime No. 264 of 2022, under Sections 498A, 304B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Talgram, District-Kannauj. In the aforesaid FIR, 5 persons namely - (1) Rahul Mishra (husband), (2) Rohit Mishra (Devar), (3) Komal (Nanad), (4) Kajal (Nanad) and (5) Mother-in-law have been

nominated as named accused.

6. After above-mentioned FIR 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 the deceased was conducted. In the opinion of Autopsy Surgeon, the cause of death of deceased was opined as Asphyxia as a result of ante-mortem hanging. However, the Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Abrasion of size 1x0.5cm present on dorsal aspect of left fore arm, 6cm above from left wrist joint.

2. Abrasion of size 1x0.5cm present on lateral aspect of left wrist joint.

3. Contusion of size 1.5cm x 1cm present on Lat. Aspect of the left Arm, 4cm above from left Elbow joint.

4. Contusion of size 03x02cm present on lat. aspect of Rt. Arm 10cm below from Rt. Shoulder joint.

5. Abrasion of size 0.5x0.5cm present on Lat. Aspect of Rt. forearm 8cm above from Rt. wrist joint.

6. One incomplete ligature mark of size 21x01cm present on Neck 1.5cm below from Rt. Ear pinna, 7.5cm below from Chin 5cm below from left Ear pinna, whole circumference of Neck is 30cm on dissection under the ligature mark injury subcutaneous tissue are dry hold whole and glistening parchment like."

7. During course of investigation, Investigating Officer examined the first informant and the other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the FIR. On the basis of which and other material collected by Investigating Officer, during course of investigation, he came to the conclusion that complicity of only 2 of the named accused namely Rahul Mishra (applicant herein) and Hemlata (mother-in-law of the deceased) is established in the crime in question. He, accordingly, submitted the charge sheet dated 24.12.2022 whereby aforementioned 2 of the named accused have been charge sheeted whereas the other named accused have been exculpated.

8. Learned counsel for applicant contends that though applicant is the husband of the deceased, a named as well as charge sheeted accused yet he is liable to be enlarged on bail. The deceased was a

short tempered lady and she has taken the extreme step of committing suicide by hanging herself. The death of the deceased is a suicidal death, which is clearly explicit from the post mortem report of the deceased.

9. Learned counsel for applicant has then invited the attention of the Court to the FIR lodged by the first informant and on basis thereof, he submits in the FIR, it has been alleged that physical and mental cruelty was repeatedly committed upon the deceased on account of additional demand of Bollero, a four wheeler. According to the learned counsel for applicant, the said allegation is false and concocted. It is a vague and bald allegation inasmuch as, same is devoid of material particulars. Attention of the Court was then invited to the registration certificate of the Bollero vehicle, copy of which is on record at page 25 of the paper book and on basis thereof, it is urged that the brother of the applicant namely - Lalta Prasad is already possessing the vehicle. On the above premise, he submits that aforesaid allegations made in the FIR has been made only to give colour to the FIR. Furthermore, the material particulars with regard to the allegations regarding demand of additional dowry and commission of physical and mental cruelty upon the deceased on account of non fulfillment of the same have not been mentioned either in the FIR nor in the statement of the first informant recorded under Section 161 Cr.P.C. i.e. date, time and place as well as the manner in which the demand was made. Referring to the judgment of Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**, he submits that since material particulars with regard to the allegations regarding demand of additional dowry and commission of physical and mental cruelty upon the deceased on account of non fulfillment of the same are conspicuous by their absence, therefore, the said allegations are prima-facie liable to be ignored by this Court at this stage.

10. 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 14.10.2022. As such, he has undergone more than 10 months of incarceration. The police report in terms of Section 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. Up to this stage, no such incriminating circumstance has emerged on the record of aforementioned case crime number necessitating the custodial arrest of applicant during the pendency of trial. To buttress his submission, he has relied upon the judgment of Supreme Court in

Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5). 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, he shall not misuse the liberty of bail and shall co-operate with the trial.

11. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is the husband of the deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The occurrence has occurred just after expiry of a period of 1 year and 2 months from the date of marriage of the applicant. Attention of the Court was invited to the post mortem report of the body of deceased and on basis thereof, it is urged that the death of the deceased is not a dowry death simplicitor. The deceased had sustained certain ante-mortem injuries on her person, which remains unexplained up to this stage. Moreover, the death of the deceased has occurred in her marital home and within 7 years of marriage. As such, the same is a dowry death. Therefore, by virtue of the provisions contained in Sections 106 and 113 B of the Evidence Act, burden is upon the applicant to explain not only the manner of occurrence but also his innocence. However, the applicant has miserably failed to discharge the said burden. On the above premise, it is thus contended that no sympathy be shown by this Court in favour of applicant. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

12. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusations made and complicity of accused coupled with the fact that as per the opinion of the Autopsy Surgeon, who had conducted the autopsy of the body of deceased, the death of the deceased is prima-faice a suicidal death as the deceased had committed suicide by hanging herself, it is true that there certain injuries were found on the body of the deceased but the said injuries are neither grievous nor fatal nor the same can be said to be the cause of death of the deceased, the allegations made in the FIR qua the demand of Bollero and commission of physical and mental cruelty upon the deceased on account of non fulfillment of demand of additional dowry are vague and bald allegations inasmuch as, the material particulars qua the same have neither been mentioned in the FIR nor in the statement of the first informant recorded under

Section 161 Cr.P.C., in view of above and also the law laid down by the Apex Court in **Kahkashan Kausar @ Sonam (Supra)**, the said allegations are, therefore, liable to be ignored by this Court at this stage, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant now stands synchronized, however, in spite of above, neither the learned A.G.A. nor the learned counsel for first informant could point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal (Supra)**, but without making any comments on the merits of the case, applicant has made out a case for bail.

13. Accordingly, the bail application is **allowed**.

14. Let the applicant-Rahul Mishra, be released on bail in the aforesaid case crime number on his 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.

15. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his 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 :- 22.8.2023

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