

**Court No. - 41**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 39000 of 2018

**Applicant :-** Shiv Ji

**Opposite Party :-** State Of U.P.

**Counsel for Applicant :-** Ashish Kumar Sinha

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Misra,J.**

1. Heard Mr. Ashish Kumar Singh, the learned counsel for the applicant and the learned A.G.A. for the State.

2. Perused the record.

3. This application for bail has been filed by the applicant-Shiv Ji (father-in-law of the deceased) for seeking his enlargement on bail in Case Crime No. 0268 of 2018, under Sections 498-A, 304-B and 201 I.P.C., Police Station Taryasujan, District Kushinagar during the pendency of the trial.

4. It transpires from the record that the marriage of the son of the applicant, namely, Rajesh was solemnized with Reena on 4th May, 2017. However, just after the expiry of a period of one year and 21 days from the date of marriage of the son of the applicant, an unfortunate incident occurred on 25th May, 2018, in which the daughter-in-law of the applicant, namely, Reena is alleged to have consumed some poisonous substance. As a consequence of the aforesaid, the daughter-in-law of the present applicant succumbed to the poisonous substance consumed by her on 25th May, 2018. However, no information of the aforesaid occurrence was given at the concerned Police Station as required under Section 174 Cr.P.C. or the family of the deceased. Without awaiting the arrival of the family members of the deceased, the dead body of the deceased was carried to crematorium and was placed on the funeral pyre. Just after the pyre was lighted, relatives of the deceased arrived at the spot and removed the dead body from the pyre. On account of the aforesaid, the body of the deceased had sustained some burn marks over the same. A first information report in respect of the aforesaid incident was lodged on the same date i.e. on 25th May, 2018 by the father of the deceased, namely, Dayashankar, which was registered as Case Crime No. 0268 of 2018, under Sections 498-A, 304-B and 201 I.P.C., Police Station Taryasujan, District Kushinagar. In the aforesaid first information report, eight persons, namely, Parmatama-maternal uncle of the husband of the deceased, Shivji-father-in-law (applicant herein), Rajesh-husband, Kamlesh-Devar, Devbrat-Davar, Dhananjay-Devar, Sachin-Devar and Manju Devi-mother-in-law of the deceased were nominated as the named accused. The inquest of the deceased was performed thereafter. In the opinion of the Panch witnesses, no definite opinion could be given regarding the nature of death of the deceased. The post-mortem of the body of the deceased was conducted on the next date of the occurrence i.e. on 26th August, 2018. The Doctor, who conducted the autopsy on the body of the deceased opined that the cause of death of the deceased could not be ascertained and therefore, the viscera of the deceased was preserved. No external ante-mortem injury was found on the body

of the deceased. The Chief Chemical Analyst has submitted the viscera report of the deceased on 28th November, 2018, in which it has been stated that a foreign chemical compound, namely, Aluminium Phosphide was found in the samples of the body of the deceased. The Police on the basis of material collected during the course of investigation in terms of Chapter XII Cr.P.C. has submitted a charge-sheet dated 25th August, 2018 against the husband and father-in-law of the deceased. In respect of the other named accused, the investigation is said to be still pending. Upon submission of the charge-sheet dated 25th August, 2018, cognizance has been taken by the court concerned vide cognizance taking order dated 28th August, 2018. What has happened subsequent to the passing of the cognizance taking order dated 28th August, 2018 has neither been detailed in the affidavit accompanying the present bail application nor the same has been disclosed at the time of hearing of the present bail application by the learned counsel for the applicant.

5. Learned counsel for the applicant submits that though the applicant is the father-in-law of the deceased but he is innocent. The applicant is in jail since 30th May, 2018, as such he has undergone more than 8 months of incarceration. The applicant has no criminal antecedents to his credit except the present one. It is then submitted that the deceased was a short tempered lady and she has taken the extreme step of committing suicide by consuming Aluminium Phosphide, as is established from the viscera report of the deceased dated 28th November, 2018. Absence of any external ante-mortem injury on the body of the deceased clearly denotes the bona fide of the present applicant. It is next submitted that general and omnibus allegations have been made in the first information report regarding the demand of dowry alleged to have been demanded. The same has neither been specified nor quantified in the first information report giving rise to the present bail application. There is no dying declaration of the deceased recovered by the Police nor there is any statement of the deceased recorded by the Police under Section 161 Cr.P.C. The police has also not recovered any suicide note of the deceased. The husband of the deceased is languishing in jail. General and omnibus allegations have been made in the first information report regarding the demand of dowry. On the aforesaid premise, it is, thus, urged that the present applicant is liable to be enlarged on bail.

6. Per contra, the learned A.G.A. for the State has opposed the prayer for bail of the present applicant. However, the learned A.G.A. could not dispute the factual submissions made by the learned counsel for the applicant.

7. Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties and without expressing any opinion on merits of the case, I am of the view that the applicant has made out a case for bail.

8. Let the applicant-Shiv Ji 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.

9. 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.

(Rajeev Misra, J.)

**Order Date :- 31.1.2019**

Sushil/-