

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45972 of 2022

Applicant :- Raju Khan @ Bhaddi Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Harendra Prakash Dwivedi, Abhinav Singh

Counsel for Opposite Party :- G.A.

Hon'ble Suresh Kumar Gupta, J.

1. Heard learned counsel for applicant, learned Additional Government Advocate appearing on behalf of State and perused the record.

2. This first bail application has been filed with regard to Case Crime No.0051 of 2022, under Sections 498A and 302 IPC, registered at Police Station Pannuganj, District Sonbhadra.

3. The applicant is brother-in-law (Devar) of deceased and as per contents of FIR, marriage between the deceased and brother of applicant had taken place 12 years prior to the incident. It is stated that about 5 years ago the deceased was continuously harassed on account of dowry demand whereafter the applicant and co-accused persons allegedly poured kerosene oil over her and set her ablaze due to which she subsequently passed away on 07.06.2022.

4. Learned counsel for applicant submits that the applicant is innocent and has been falsely implicated in the charges levelled against him only on account of the fact that he is brother-in-law of deceased. It is submitted that only general allegations have been made in the FIR and without any specific role being implicated upon the applicant. Attention has been drawn to the dying declaration with the submission that all the family members have been implicated without any specific role being assigned to any one. Learned counsel has also drawn attention to statements of independent witnesses also to indicate that only general averments have been made without any specific role being assigned to the applicant who is in jail since 17.06.2022 with only charge-sheet having been filed.

This bail application is being pressed on the ground of parity as co-accused Rubeena, who is sister-in-law of the deceased having similar allegation against her has already been granted bail by this Court vide order dated 25.11.2022 passed in Criminal Misc. Bail Application No. 46432 of 2022. Therefore,

the present applicant is also entitled to get bail on the ground of parity. Mother-in-law is said to have been granted bail by the court below.

5. Learned Additional Government Advocate appearing on behalf of State has opposed the bail application with the submission that the applicant has clearly been named alongwith co-accused as being instrumental in the dowry death.

6. Hon'ble the Supreme Court in ***Sanjay Chandra v. Central Bureau of Investigation***, reported in ***(2012) 1 SCC 40*** has specifically held that bail is to be a norm and an under-trial is not required to be in jail for ever pending trial. Relevant paragraphs of the judgment are as under :-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."

7. Considering submissions advanced by learned counsel for parties and upon perusal of material available on record, it appears that the marriage between the deceased and brother of applicant had taken place 12 years prior to date of incident. General allegations of dowry demand have been made in the FIR as well as in the dying declaration without any specific role being assigned to the applicant. In her dying declaration, the deceased had also stated that after she caught fire, the family members tried to douse the fire. There does not appear to be any specific role assigned to the applicant in the alleged dowry death. Applicant is in jail since 17.06.2022 with only charge-sheet having been filed.

8. Looking to the nature of allegations levelled against the applicant and submission made in the bail application, without expressing any opinion on the merits of case and considering the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence,

particularly since no reasonable apprehension of tampering with the witnesses has been alleged, prima facie, this Court finds, the applicant is entitled to be released on bail in this case.

9. Accordingly bail application is allowed.

10. Let applicant, (Raju Khan alias Bhaddi Khan) involved in the aforesaid case crime be released on bail 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 shall not seek any adjournment on the dates 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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 him in accordance with law.

Order Date :- 30.11.2022

Virendra