

**Court No. - 64**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 28051 of 2024

**Applicant :-** Satyendra

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

**Counsel for Applicant :-** Safiullah

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

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

1. Heard Mr. Safiullah, 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-Satyendra, seeking his enlargement on bail in Case Crime No. 305 of 2023, under Sections 498-A and 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Behjoi, District-Sambhal during the pendency of trial.

4. At the very outset, the learned counsel for applicant submits that named and charge sheeted co-accused Gyan Chandra has been enlarged on bail by this Court, vide order dated 27.10.2023 passed in Criminal Misc. Bail Application No. 45156 of 2023 (Gyan Chandra Vs. State of U.P.). For ready reference, the order dated 27.10.2023 is reproduced herein under:-

*"Heard Mr. Safiullah, the learned counsel for applicant and the learned A.G.A. for State.*

*Perused the record.*

*This application for bail has been filed by applicant Gyan Chandra seeking his enlargement on bail in Case Crime No. 305 of 2024, under Sections 498A, 304B IPC and Sections 3/4 D.P. Act, P.S. Behjoi, District Sambhal, during the pendency of trial.*

*Record shows that in respect of an incident which is alleged to have occurred on 21.6.2023, a prompt F.I.R. dated 21.6.2023 was lodged by first informant Hari Om (father of the deceased) and was registered as Case Crime No. 305 of 2024, under Sections 498A, 304B IPC and Sections 3/4 D.P. Act, P.S. Behjoi, District Sambhal. In the aforesaid F.I.R., five persons namely Satyendra Kumar, Satyaveer, Seema, Gyanchandra and wife of*

*Gyanchandra have been nominated as named accused.*

*Learned counsel for applicant submits that applicant is the father-in-law of deceased. Though applicant is a named as well as charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant on 15.8.2023 along with two others i.e. Gyanchandra, Satyendra Kumar (husband) and mother-in-law of the deceased, yet he is liable to be enlarged on bail.*

*According to the learned counsel for applicant, the marriage of deceased was solemnized with the son of applicant on 25.6.2021. The deceased was a short tempered lady and she took extreme step for terminating her life by consuming some poisonous substance on 21.6.2023 itself. The victim was rushed to the hospital, but she succumbed to the poisonous substance consumed by her on the way. On the above premise, he submits that the death of the deceased is a suicidal death. The Autopsy Surgeon, who conducted post mortem of the body of the deceased did not any external or internal ante mortem injury on the body of the deceased which speaks of the bona fide of the applicant. The husband of the deceased i.e. son of the applicant is already languishing in jail. As per viscera report, a foreign chemical compound namely Aluminum Phosphide was found in the body parts of the deceased sent for chemical examination. Allegations made in the F.I.R. with regard to commission of physical and mental cruelty upon deceased for non fulfillment of demand of dowry are vague and bald allegations, inasmuch as same are devoid of material particulars. Applicant cannot be said to be the beneficiary of the alleged demand of dowry. Considering the nature of death of deceased the applicant is not liable to be awarded the maximum sentence under Section 304-B I.P.C.*

*Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 22.6.2023. As such, he has undergone, more than 4 months of incarceration. The police report i.e. charge sheet in terms of Section 173 (2) Cr. P. C. has already been submitted against applicant along with two others co-accused i.e. Gyanchandra and Satyendra Kumar (husband) and mother-in-law of the deceased on 15.8.2023. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. 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 the trial.*

*Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The occurrence has taken place within 7 years of marriage at the marital home of the deceased. As such, the death of the deceased is a dowry death. In view of above, the burden is upon applicant to not only explain the manner of occurrence but also is his innocence in terms of Sections 106 and 113 B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden upto this stage. He, therefore, contends that no sympathy be shown by this Court in favour of applicant. However, he could not dislodge the*

***factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.***

***Having heard the learned counsel for applicant, the learned A.G.A. for State, and upon perusal of record, evidence, accusations made, nature and gravity of offence, complicity of accused and coupled with the fact that the prima facie the death of the deceased is a suicidal death, the bona fide of the applicant is explicit from the fact that no external ante mortem injury was found on the body of deceased, as per viscera report, a foreign chemical compound namely Aluminium Phosphide was found in the body parts of the deceased sent for chemical examination, applicant is the father-in-law of deceased, in view of the nature of death of deceased, applicant is not liable to be awarded maximum sentence under Section 304-B IPC, allegations made in the F.I.R. regarding demand of dowry and commission of physical and mental cruelty upon deceased are vague and bald allegations being devoid of material particulars, 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 the applicant stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.***

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

***Let the applicant Gyan Chandra involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..***

***(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., 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, in accordance with law, under section 174-A I.P.C.***

***(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 him 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 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."*

5. Similarly, another named and charge sheeted co-accused Kiran @ Charanwati has also been enlarged on bail by this Court, vide order dated 03.11.2023 passed in Criminal Misc. Bail Application No. 47028 of 2023 (Kiran @ Charanwati Vs. State of U.P.). For ready reference, the order dated 03.11.2023 is extracted herein under:-

*"1. Heard Sri Safiullah, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.*

*2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Kiran @ Charanwati, seeking enlargement on bail during trial in connection with Case Crime No. 305 of 2023, under Sections 498-A, 304-B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Behjoi, District Sambhal.*

*3. Learned counsel for the applicant argued that the applicant is the mother-in-law of the deceased Suman. She has been falsely implicated in the present case. It is argued that the marriage of Suman was solemnized with Satendra Kumar the son of the applicant on 25.06.2021. It is further argued that general and omnibus allegations have been levelled against the applicant and all the accused persons. The cause of death could not be ascertained and viscera was preserved in which after examination Aluminium Phosphide was found. It is argued that the investigation in the matter has concluded and charge-sheet has been submitted against Gyan Chandra the father-in-law, Satendra Kumar the husband of the deceased and the applicant. It is argued while placing paragraph 17 of the affidavit that the applicant is living separately with her elder son Satyaveer from the deceased and her husband in another house. It is argued that co-accused Gyan Chandra has been granted bail by a co-ordinate Bench of this Court vide order dated 27.10.2023 passed in Criminal Misc. Bail Application No. 45156 of 2023, the copy of the said order has been produced before the Court which is taken on record. It is argued that Satendra Kumar the husband of the deceased is in jail. The applicant is a lady and is entitled to the benefit of Section 437 Cr.P.C. The applicant has no criminal history as stated in para 21 and is in jail since 04.08.2023.*

*4. Per contra, learned counsel for the State has opposed the prayer for bail*

**and argued that the applicant is named in the first information report along with other accused persons and there are allegations against her.**

**5. After having heard learned counsel for the parties and perusing the record, it is apparent that the applicant is mother-in-law of the deceased. General and omnibus allegations have been levelled against the applicant and other accused persons in the first information report. The husband of the deceased is in jail. Co-accused Gyan Chandra has been granted bail by a co-ordinate Bench of this Court.**

**6. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.**

**7. Let the applicant- Kiran @ Charanwati, 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.**

**ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.**

**(iii) The applicant shall file an undertaking to the effect that 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.**

**(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure 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 her, in accordance with law, under section 174-A I.P.C.**

**(v) 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 her in accordance with law and the trial court may proceed against her under Section 229-A IPC.**

**(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.**

**8. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned**

*above, court concerned will be at liberty to cancel the bail and send the applicant to prison.*

**9. The bail application is allowed."**

6. Learned counsel for applicant submits that though applicant is the husband of deceased, a named and charge sheeted accused yet he is liable to be enlarged on bail. It is then submitted that applicant is innocent. He has falsely been implicated in aforementioned case crime number. The marriage of applicant was solemnized with the deceased on 25.06.2021 in Social Benevolence Programme Organized by the State Government i.e. Chief Minister scheme for mass manage. On the above premise, he submits that there cannot be any issue with regard to the demand of dowry. Referring to the post mortem report of deceased, it is urged by the learned counsel for applicant that Autopsy Surgeon, who conducted autopsy of the body of deceased, did not find any external or internal anti-mortem injury on the body of deceased. The same speaks of the bona-fide of applicant. According to the FSL report of the deceased, the foreign chemical compound found in the body parts of deceased sent for chemical examination is Aluminum Phosphate. As such, the death of deceased is, prima-facie, a suicidal death.

7. In the submission of the learned counsel for applicant, the deceased was a short tempered lady and she has taken an extreme step of terminating her life by consuming aforementioned chemical substance. Attention of the Court was then invited to the FIR and on basis thereof, he submits that the allegations made in the FIR regarding demand of motorcycle and additional dowry to the tune of Rs. 1,00,000/- are vague and bald allegations. The same are devoid of material particulars and have also not been explained in the statement of first informant recorded under Section 161 Cr.P.C. either, which is on record at page 51 of the paper book.

8. At this juncture, the learned counsel for applicant invited the attention of Court to the judgment of Supreme Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599**, and on basis thereof, he submits that since the allegations made in the FIR regarding demand of dowry and commission of cruelty upon deceased have not been substantiated by material particulars neither in the FIR itself nor in the statement of first informant recorded under Section 161 Cr.P.C., therefore, prima-facie, the said allegations are liable to be ignored by this Court at this stage.

9. 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 22.06.2023. As such, he has undergone more than one year and one months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he 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.

10. Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since applicant is the husband of deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The marriage of applicant was solemnized with the deceased on 25.06.2021, whereas the occurrence giving rise to present criminal proceedings occurred on 21.06.2023 in the house of applicant i.e. within 7 years of marriage. By virtue of above, the burden is upon the applicant himself to not only explain the manner of occurrence but also his innocence in terms of Sections 106 and 113-B of the Evidence Act. However, applicant has miserably failed to discharge the said burden up to this stage. Applicant cannot claim parity from named and charge sheeted co-accused i.e. father-in-law and mother-in-law of deceased, who have been enlarged on bail. It is thus urged by the learned A.G.A. that no good ground for interference by this Court is made out. As such, the present application for bail is liable to be rejected. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the marriage of deceased was solemnized with applicant under the scheme launched by the State Government as noted above, therefore, prima-facie, it cannot be said that demand of dowry was ever raised by the applicant or any of his family members, co-accused, who are similarly situated and circumstanced, have already been enlarged on bail, prima-facie the death of deceased is a suicidal death, the bona-fide of applicant is

apparent from the fact that Autopsy Surgeon, who conducted autopsy of the body of deceased, did not find any external or internal anti-mortem injury on the body of deceased, the allegations made in the FIR qua the demand of dowry and commission of cruelty upon the deceased, on account of non-fulfillment of dowry, are vague and bald allegations inasmuch as, the same are devoid of material particulars, even in his statement under Section 161 Cr.P.C., first informant has not explained as to how the demand of dowry was made by charge sheeted accused or cruelty was committed upon deceased, as such, the same are liable to be ignored by this Court at this stage in view of the judgement of Supreme Court in **Kahkashan Kausar @ Sonam (Supra)**, there is nothing on record to show that any criminal proceedings were initiated by the first informant against named/charge sheeted accused prior to the death of deceased for the alleged illegal demand of dowry or commission of cruelty upon the deceased, 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 stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgement of Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5)**, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

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

13. Let the **applicant-Satyendra**, 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.

14. 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 :- 31.7.2024**

Vinay