

Hemraj Kumar vs State Of U.P. on 1 May, 2024

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Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2024:AHC:77542

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 538 of 2023

Applicant :- Hemraj Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ankur Varshney, Kuldeep Singh Tomar, Rakesh Kumar Maurya, Shweta S

Counsel for Opposite Party :- Baij Nath Pal, G.A., S.S. Rajput

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Rakesh Kumar Maurya, learned counsel for applicant, Sri Roshan Kumar Singh, learned AGA for State and Sri S.S. Rajput, Advocate for Complainant.

2. Applicant-Hemraj Kumar has approached this Court by way of filing present bail application seeking enlargement on bail in Case Crime No. 241 of 2022, under Sections 498A, 304B IPC and 3/4 Dowry Prohibition Act, Police Station Chandaus, District Aligarh.

3. This bail application was filed on 21.12.2022 and according to order sheet earlier it was listed for hearing on six dates. Though counsel for parties remained present, however, it was mainly adjourned to exchange the pleadings.

4. Applicant before this Court is husband of deceased, who died within two years and two months of her marriage under otherwise than normal circumstances. As per post mortem report, immediate cause of death was asphyxia as a result of ante mortem hanging and applicant is in jail since 31.08.2022, i.e., for about one year and eight months.

5. As per charge sheet there are 25 proposed witnesses and according to instruction of counsel for parties, till date two witnesses have been examined and nature of evidence appears to be in support of prosecution.

6. Learned counsel for applicant has mainly refers a proposed defence which alleged that deceased was a lady of bad character, however, this proposed defence is vehemently opposed by learned counsel for complainant that it may not be a ground to consider present bail application.

7. Learned counsel for applicant further submits that initially FIR was lodged against five persons including applicant, however, charge sheet was filed only against applicant and his father. Father-in-law of deceased has already been granted bail and learned counsel refers the reasons assigned in bail order that it was granted on ground that there were general allegations against all accused.

8. Learned counsel appearing for Complainant submits that there are consistent evidence against applicant that being husband he committed cruelty for or in connection with demand of dowry and deceased has died within a short period of her marriage, i.e., within two years and two months. Proposed defence is not only vague but absolutely incorrect.

9. Learned AGA has also opposed bail and supports the evidence collected during investigation as well as that statement of witnesses, which appears to be consistent against applicant. However, it has not been denied that applicant is in jail for about one year and eight months and in case of conviction minimum sentence is seven years as well as reasons assigned in order in order passed in bail application of co-accused.

10. I have considered the above mentioned rival submissions in referred factual and legal backgrounds and in view of established principle of jurisprudence of bail i.e ?bail is rule and jail is exception? as well as relevant factors for consideration of a bail application such as (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; (viii) danger, of course of justice being thwarted by grant of bail etc, and that an order to grant or not to grant bail must assigned reasons (see Deepak Yadav vs State of U.P. (2022) 8 SCC 559, Manoj Kumar Khokar vs State of Rajasthan and Anr (2022) 3 SCC 501, The State of Jharkhand vs Dhananjay Gupta @ Dhananjay Prasad Gupta: Order dated 7.11.2023 in SLP(Crl) No.10810/2023, Shiv Kumar Vs The State of U.P. and Ors : Order dated 12.9.2023 in Criminal Appeal No.2782 of 2023), I am of considered opinion that present is a fit case to grant bail to applicant mainly on following grounds:-

(a) There are allegations against applicant that being husband he has harassed her wife and committed cruelty for or in connection with demand of dowry, which remained consistent during trial also. However, considering that co-accused, i.e., father-in-law, has already been granted bail, against whom also there are similar allegations and evidence, as such applicant only on ground being husband, cannot be considered differently.

(b) Applicant is in jail for about one year and eight months and in case of conviction minimum sentence is seven years.

(c) Trial is proceeding and considering nature of evidence before Trial Court there is no chance that applicant may influence any witness.

(d) So far as defence theory is concerned, Court takes note of rival submission and is not making any comment on it at this stage as it would be subject matter of trial.

11. The applicant is directed to remain present on each and every date as and when required by Trial Court during trial and in case any application for exemption on vague ground is filed, the same shall be a ground for Trial Court to cancel bail immediately.

12. Let the applicant-Hemraj Kumar 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 shall file an undertaking to the effect that he shall not seek any adjournment or exemption from appearance on the date fixed in trial. 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.

(iii) 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 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 Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously, preferably within a period of six months after release of applicant, if there is no other legal impediment.

13. 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.

14. The bail application is allowed.

15. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application.

Order Date :- 1.5.2024 AK