

# Usman vs State Of U.P. on 29 June, 2021

**Author: Saurabh Shyam Shamshery**

**Bench: Saurabh Shyam Shamshery**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on - 22.6.2021

Delivered on -29.6.2021

Court No. - 83

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22959 of 2021

Applicant :- Usman

Opposite Party :- State of U.P.

Counsel for Applicant :- Sadaful Islam Jafri, Nasira Adil, Nazrul Islam Jafri (Senior Adv.)

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

1. Hearing of this bail application was concluded through video conferencing.
2. This bail application under Section 439 of Code of Criminal Procedure is filed by the applicant seeking enlargement on bail during trial in connection with Case Crime No. 364 of 2020, under Sections 498-A, 304-B IPC & Section 3/4 Dowry Prohibition Act, Police Station - Nai Mandi, District - Muzaffarnagar.
3. Applicant is the husband of deceased against whom along with co-accused after investigation, a charge-sheet has been filed u/s 498-A, 304-B and 3/4 Dowry Prohibition Act on 8.9.2020, alleging that applicant and his family members repeatedly harassed deceased by making dowry demands, who died in otherwise than under normal circumstances within 2 1/2 year of her marriage.

4. Smt. Nasira Adil, learned counsel for the applicant has submitted that applicant is the husband of deceased. All other co-accused have been granted bail by this Court. Deceased has never made any complaint against the applicant or co-accused regarding any dowry demand. Learned counsel has pointed out that in the confessional statement, the applicant has stated that there was a quarrel between him and deceased in the night on which, she got angry and went inside the room and closed the door from inside. Next morning, it was found that deceased had committed suicide. In the post-mortem report, cause of death is reported to be asphyxia, as a result of anti-mortem hanging. It is also pointed out that deceased was a short tempered lady. During investigation, no specific evidence is surfaced against the applicant. Applicant is innocent and has been falsely implicated in the present case. It is lastly submitted that applicant is languishing in jail since 21.7.2020 and in case, he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

5. Learned A.G.A. has opposed the prayer of bail and submits that deceased died within a period of 2 ½ year of her marriage in otherwise than under normal circumstances. During investigation, independent witnesses have narrated that applicant and his family members have repeatedly demands dowry from the deceased and also harassed her for it. The case of the applicant is distinguishable from the case of other co-accused. Therefore, the prayer for bail application is liable to be rejected.

6. (A) Law on bail is well settled that 'Bail is rule and Jail is exception'. Bail should not be granted or rejected in a mechanical manner as it concerns liberty of a person. At the time of considering an application for bail, the Court must take into account certain factors such as existence of a prima facie case against the accused, gravity of the allegations, severity of punishment, position and status of the accused, likelihood of the accused fleeing from justice and repeating the offence, reasonable apprehension of tampering with the witnesses and obstructing the Courts as well as criminal antecedents of the accused.

(B) It is also well settled that the Court while considering an application for bail must not go into deep merits of the matter such as question of credibility and reliability of prosecution witnesses which can only be tested during the trial. Even ground of parity is one of the above mentioned aspects which are essentially required to be considered.

(C) It is also well settled that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner, compassionately and not in whimsical manner. The Court should record the reasons which have weighed with the court for the exercise of its discretionary power for an order granting or rejecting bail. Conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

(D) The Court while granting bail in the case involving sexual offence against a woman should not mandate such bail conditions, which is/are against the mandate of "fair justice" to victim such as to make any form of compromise or marriage with the accused etc. and shall take into consideration the directions passed by Supreme Court in Aparna Bhat and others vs. State of Madhya Pradesh and another, reported in 2021 SCC Online SC 230, in this regard.

7. Considering the rival submission, material available on record, the period of detention already undergone, the unlikelihood of early conclusion of trial, absence of any convincing material to indicate the possibility of tampering with the evidence, relevant factors mentioned above, particularly that cause of death was opined in the post-mortem report to be asphyxia due to anti-mortem hanging; that deceased has not raised any complaint before committing suicide; that there is no specific allegation of demand of dowry in the First Information Report and also considering that bail has already been granted to all the co-accused and further taking note that allegation of demand of dowry as mentioned by the independent witnesses are prima facie based on heresay and also considering that there is no previous criminal history of the applicant and he is languishing in jail since 21.7.2020, this Court is of the view that a case of grant of bail is made out.

8. Let applicant - Usman 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 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 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 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.

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 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.

v) The applicant shall remain present, in person, before 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 Trial Court absence of applicant is deliberate or without sufficient cause, then it shall be open for Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and Trial Court may proceed against him under Section 229-A IPC.

9. 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.

10. The bail application is allowed.
11. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application.
12. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.
13. The computer generated copy of such order shall be self attested by the counsel of the party concerned.
14. It is expected from the trial court that trial of this case will be concluded expeditiously and while granting any adjournment, trial court will take note of the provisions of Section 309 Cr.P.C.
15. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 29.6.2021 Rishabh [Saurabh Shyam Shamsbery, J.]