

Amzad vs State Of U.P. on 10 September, 2020

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 42

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18243 of 2020

Applicant :- Amzad

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Singh, Anil Kumar Srivastava (Senior Adv.)

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Sunil Kumar Singh, learned counsel for applicant and learned A.G.A. for State.

2. Applicant-Amzad has approached this Court by way of filing the present Criminal Misc. Bail Application under Section 439 Cr.P.C. after rejection of his Bail Application vide order dated 31.01.2020 passed by Fourth Additional Sessions Judge (Special Judge E.C. Act), Jaunpur in Case Crime No. 10 of 2018, under Sections 498A, 304B, 307, 326, 506 IPC and 3/4 Dowry Prohibition Act, Police Station Badlapur, District Jaunpur.

3. Learned counsel for the applicant submits that applicant is the husband of deceased. The alleged incident was occurred on 03.01.2018 and deceased died during treatment on 07.02.2018. Dying declaration which was recorded on 09.01.2018 alleged the role of burning to husband as well as 11 other relatives and even on a child of one and half or two years old. Learned counsel also submits that mother-in-law herself admitted deceased in hospital at CHC, Badlapur and thereafter her

husband shifted deceased to District Hospital, Jaunpur from where she was referred to BHU. As per post mortem report cause of death was septicemic shock as a result of infected burn injury. Two co-accused have already been granted bail by this Court vide orders dated 25.11.2019 passed in Criminal Misc. Bail Applications No. 11841 of 2019 and 13706 of 2019. There are vague and general allegations of demand of dowry. Lastly he submits that applicant has no criminal history and he is languishing in jail since 05.04.2018 and in case, he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

4. Learned A.G.A. appearing for State has opposed the bail application relying on the contents of FIR and states that a strong case has been made out against applicant.

5. 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 the liberty of a person. At the time of considering an application for bail, the Court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused. It is also well settled that the Court while considering an application for bail must not go into deep into 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 while considering application for bail. 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. 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.

6. 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 all family members and even a child of aged and half or two years have been named in dying declaration, deceased died after a period of more than one month of incident, conduct of mother-in-law and applicant of rushing the deceased immediately to hospital and thereafter to better hospital, allegation of demand of dowry is vague and general in nature, two co-accused have already been granted bail by this Court, no criminal history is reported against applicant, this Court is of the view that a case of grant of bail is made out. However, it is made clear that above mentioned observations are only for the purpose of consideration of present bail application.

7. Let applicant-Amzad 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 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 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.

vi) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of 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.

10. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

11. The computer generated copy of such order shall be self attested by the counsel of the party concerned.

12. 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 :- 10.9.2020 AK