

Munna Lal vs State Of U.P. on 19 May, 2022

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Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26893 of 2020

Applicant :- Munna Lal

Opposite Party :- State of U.P.

Counsel for Applicant :- Rohan Gupta, Ankit Saran, Deepak Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Deepak Kumar, learned counsel for applicant and Sri Munne Lal, learned A.G.A. for State.

2. Applicant-Munna Lal, 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 27.05.2020, passed by Sessions Judge, Mainpuri, in Case Crime No.222 of 2019, under Sections 304B, 498A, 328 IPC and 3/4 Dowry Prohibition Act, Police Station Kurawali, District Mainpuri.

3. Applicant is the husband of deceased, who died under other than normal circumstances within five years of her marriage. Viscera was preserved and in the report Organo Chloro Insecticide Poison was found. In the FIR there are allegations for committing cruelty with regard to demand of dowry of a motorcycle, one golden chain and Rs. 1 lakh against applicant and others. There is an averment of preparing a video by the deceased regarding harassment committed by accused persons with her.

4. Learned counsel for applicant submits that applicant is in jail since 25.07.2019 and till date trial is not concluded. All other co-accused have been granted bail. Husband himself took the wife to

hospital. There was no complaint whatsoever with regard to demand of dowry or any harassment during the marriage period of five years. There are general allegations against applicant and his family members. During investigation no video was recovered.

5. Learned A.G.A. appearing for State has opposed the prayer for bail and submits that there are specific allegation against applicant and his family members with regard to demand of dowry. Viscera report indicates that poisonous substance was found. However, it is not disputed that till date trial is not concluded.

6. LAW ON BAIL A. "The basic rule may perhaps be tersely put as bail, not jail" (State Of Rajasthan, Jaipur vs Balchand @ Baliay : (1977 AIR 2447, 1978 SCR (1) 535). Power to grant bail under Section 439 of CrPC, is of wide amplitude. The court is bestowed with considerable but not unfettered discretion, which calls for exercise in a judicious manner and not as a matter of course and not in whimsical manner. (see Ram Govind Upadhyay Vs Sudarshan Singh :(2002) 3 SCC 598 and Neeru Yadav Vs State of U.P.:(2016)15 SCC 422).

B. "The considerations in granting bail are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out." [Gurcharan Singh v. State (Delhi Administration), (1978) 1 SCC 118)]. "There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter-alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused" [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21]. In Manno Lal Jaiswal vs. The State of U.P. and others, 2022 SCC OnLine SC 89 Supreme Court has observed that, "when the Accused were charged for the offences punishable under Section 149 of the Indian Penal Code also and when their presence has been established and it is stated that they were part of the unlawful assembly, the individual role and/or overt act by the individual Accused is not significant and/or relevant." In Ashim vs. National Investigation Agency, (2022) 1 SCC 695, Supreme Court has observed that, "Once it is obvious that a timely trial would not be possible and the Accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge him on bail."

C. "....It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge." (Pralhad Singh Bhati vs. NCT of Delhi and Ors:(2001) 4 SCC 280).

D. "....It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded

in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment...." (Mahipal v. Rajesh Kumar, (2020) 2 SCC 118) and also (Ms. Y versus State of Rajasthan and Anr :2022 SCC OnLineSC 458).

E. "...There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused." (Manoj Kumar Khokhar vs. State of Rajasthan and another, (2022)3 SCC501).

7. In view of above discussion on law and submissions made by learned counsel for parties, it appears that applicant is in jail since 25.07.2019, i.e. for about two years and ten months and till date trial is not concluded. During post mortem cause of death was not ascertained, therefore, Viscera was preserved which was examined and poisonous substance was found. However, there is certain ambiguity with regard to injury caused to deceased because counsel for applicant has orally argued that it was a case of self administration of poison and due to that deceased fell down and caused injury on head. In the documents appended from pages 33 to 36, which are declared to be a "true copy" of post mortem report, an ante mortem injury was referred, which is stitch wound over occipital region (Pages 34 and 36). However, in the documents appended from pages 37 to 45, which appear to be photocopy of the post mortem report, though not declared as such, no external injury was mentioned (Pages 40 and 42). Considering that it is a case where poisonous substance was found in viscera report and there are specific allegation against applicant with regard to demand of dowry, despite the applicant being in jail for two years and ten months and trial is not proceeded much, still I do not find it a fit case for grant of bail.

8. The application is accordingly rejected.

9. Before concluding this order, it is apposite to make a comment on the annexures annexed alongwith this bail application which are frequently found in many bail applications. The typed version of photocopy of a document is not thoroughly checked before filing and invariably there are many discrepancies or mistakes in the typed version of the documents, as in the present case, there are material discrepancies between typed version and photocopy of the post mortem report. Learned counsel for applicant has argued the case on the basis of typed copy of post mortem report and has made a categorical oral submission about the alleged injury caused on the head of deceased, whereas no such injury was mentioned in the photocopy of post mortem report. It is also pertinent to mention here that a typed copy of a document is declared to be a "true copy" in the bail applications whereas it ought to be "true typed copy". It may be possible that it is a bona fide mistake, however, it might be an intentional also in order to mislead the Court, which is not only goes against the applicant and his pairkar but also against the Advocate, who has filed the case.

Therefore, the affidavit of pairokar should make specific declaration that the true typed copies are compared to the best of his knowledge and ability and in case such declaration is found to be incorrect, the consequence would follow. The present proforma of affidavit does not record any such declaration with regard to annexures as well as the true typed copies annexed alongwith the affidavit.

10. The Registrar General is directed to take requisite steps in this regard and if necessary may put before Hon'ble the Chief Justice for appropriate orders on Administrative side.

11. For reference the scanned copy of relevant pages No. 34, 36, 40 and 42 are pasted below:

Order Date :- 19.5.2022 AK