

Kanhaiya Lal vs State Of U.P. on 17 May, 2022

Author: Sanjay Kumar Pachori

Bench: Sanjay Kumar Pachori

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9649 of 2022

Applicant :- Kanhaiya Lal

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Pachori,J.

Heard Shri Rajesh Kumar Mishra, learned counsel for the applicant and Shri Vishwa Deepak Mishra, learned A.G.A. for the State and perused the material on record.

The present bail application has been filed on behalf of applicant Kanhaiya Lal (father-in-law of the deceased) under Section 439 of the Code of Criminal Procedure, with a prayer to release him on bail in Case Crime No. 337 of 2021 for offence punishable under Sections 498-A, 304-B of the Indian Penal Code and Section 3/4 Dowry Prohibition Act, registered at Police Station Handiya, District Prayagraj, during pendency of the trial, after rejecting the bail application of the applicant by Sessions Judge, Allahabad vide order dated 6.1.2022.

Brief facts of the case are that the First Information Report dated 4.6.2021 has been lodged by brother of the deceased Angoora Devi against the applicant and three named family members of the applicant including the husband of the deceased stating therein that marriage of his sister was

solemnized with the co-accused Sushil prior to three years of the incident. After six months of the marriage, applicant and other co-accused persons demanded one bike and Rs. 10,000/- as additional dowry. Due to this reason on 4.6.2021 at 11.00 a.m. applicant and other co-accused persons murdered his sister by hanging.

After lodging the first information report, inquest of the body of the deceased was conducted on 4.6.2021 at 21.00 hours. Postmortem of the body of the deceased was conducted on 5.6.2021 at 4.30 p.m. As per postmortem report, except ligature mark no other external injury was found on the person of the deceased. Cause of death was asphyxia due to ante mortem hanging. After recording the statements of the first informant and other prosecution witnesses under Section 161, Cr.P.C., charge sheet has been submitted against the applicant, co-accused Sushil and Shakauntala. The Investigating Officer has exonerated sister-in-law of the deceased. The applicant was arrested on 6.6.2021.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. It is further submitted that the applicant is father-in-law of the deceased. General allegation of demand of dowry and harassment has been levelled against the applicant. No specific role and involvement has been attributed to the applicant. It is further argued that except ligature mark no other external injury was found on the person of the deceased. Co-accused Sushil, husband of the deceased is in judicial custody. It is further argued that co-accused Shakuntala Devi, mother-in-law of the deceased, having similar role, has been granted bail by Coordinate Bench of this Court vide order dated 11.2.2022 in Criminal Misc. Bail Application No. 44929 of 2021.

He has next argued that the applicant has no previous criminal history and if the applicant is released on bail, he shall not misuse the liberty of bail.

Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the applicant and submits that the allegations involved are very serious in nature and the delay in lodging the FIR cannot be said to be fatal to the case at this juncture while considering the application of bail. But he could not point out any material to the contrary. He further submits that in case the applicant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

After considering the facts of the present case it prima facie appears that;

- (a) Applicant is father-in-law of the deceased;
- (b) Marriage of the deceased Angoori Devi was solemnized with co-accused Sushil three years prior to the incident;
- (c) General allegation of demand of dowry and harassment has been levelled against the applicant;
- (d) No specific role and involvement has been attributed to the applicant;

(e) Except ligature mark no other external injury was found on the person of the deceased;

(f) Co-accused Shakuntala Devi, mother-in-law of the deceased, having similar role, has been granted bail by Coordinate Bench of this Court vide order dated 11.2.2022 in Criminal Misc. Bail Application No. 44929 of 2021.

It is a settled law that while granting bail, the court has to keep in mind the nature of accusation, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, his role and involvement in the offence, his involvement in other cases and reasonable apprehension of the witnesses being tampered with.

Taking into account the totality of facts and keeping in mind, the ratio of the Apex Court's judgment in the case of State of Rajasthan v. Balchand @ Baliay (1977) 4 SCC 308, Gudikanti Narasimhulu And Ors., v. Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429, Ram Govind Upadhyay v. Sudarshan Singh & Ors., (2002) 3 SCC 598, Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., (2010) 14 SCC 496 and Mahipal v. Rajesh Kumar & Anr., (2020) 2 SCC 118, the larger interest of the public/State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail. Hence, the present bail application is allowed.

Let applicant, Kanhaiya Lal be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

- (i) The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.
- (ii) The applicant shall not pressurize/intimidate the prosecution witnesses.
- (iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.
- (iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.
- (v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that 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 in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the applicant, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the applicant alongwith a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

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 :- 17.5.2022 T. Sinha