

Bindu Devi vs State Of U.P. on 31 October, 2022

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29012 of 2022

Applicant :- Bindu Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Adya Prasad Tewari, Ravindra Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

List revised.

Heard Sri Ravindra Kumar Yadav, learned counsel for the applicant, Sri Ankit Srivastava, learned counsel for the State and perused the material on record.

This is the second bail application under Section 439 of Code of Criminal Procedure filed by the applicant Bindu Devi, seeking enlargement on bail during trial in S.T. No. 2266 of 2021, arising out of Case Crime No. 281 of 2021, Sections 498A, 304B, 201 I.P.C. and 3/4 D.P. Act, registered at P.S. Jhangaha, District Gorakhpur.

The first bail application of the applicant was rejected by this Court vide order dated 3.2.2022 passed in Criminal Misc. Bail Application No. 42408 of 2021.

Learned counsel for the applicant argued that fresh and new ground in the bail application is that the trial in the matter has started in which Ram Pravesh Yadav, the brother of the deceased, was examined as P.W.-1 who did not support the prosecution case and was declared hostile, Mahendra the father of the deceased was examined as P.W.-2 who also did not support the prosecution case and was declared hostile and Smt. Israwati Devi, the mother of the deceased, was examined as P.W.-3 who also did not support the prosecution case and was declared hostile. Para-7, 8 and 9 of the affidavit in support of bail application and annexure nos. 3, 4 and 5 of the same being the statements of the said three witnesses have been placed before the Court to buttress the said arguments. It is argued that P.W.-2 Mahendra the father of the deceased, was the first informant. It is argued that the applicant is the mother-in-law of the deceased. It is argued that co-accused Sangam Yadav the husband of the deceased has been granted bail by a co-ordinate Bench of this Court vide order dated 27.9.2022 passed in Criminal Misc. Bail Application No. 39417 of 2022 (Sangam Yadav vs. State of U.P.), copy of the said order has been produced before the Court which is taken on record.

It is further argued that since three prosecution witnesses who are material witnesses have not supported the prosecution case and have been declared hostile and as such no case for dowry, harassment and dowry death has been made out against the applicant. The applicant is a lady and is entitled to the benefit of Section 437 Cr.P.C. The applicant is in jail since 03.8.2021.

Per contra, learned State counsel opposed the prayer for bail and argued that the first bail application of the applicant was rejected on merits by this Court by a detailed order but could not dispute the arguments that three prosecution witnesses have not supported the prosecution case and have been declared hostile and also the fact that Sangam Yadav the husband of the deceased has been granted bail by a co-ordinate Bench of this Court.

After having heard learned counsels for the parties and perusing the record, it is apparent that the first bail application of the applicant was rejected by this Court vide order dated 3.2.2022 passed in Criminal Misc. Bail Application No. 42408 of 2021, the said order is quoted herein below:

"The Court is convened through video conferencing.

Heard Ms. Anjali Singh, learned counsel for the applicant and Sri Satish Kumar Singh, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Bindu Devi, seeking enlargement on bail during trial in connection with Case Crime No. 281 of 2021, under Sections 498-A, 304-B, 201 IPC and 3/4 D.P. Act, registered at P.S. Jhangaha, District Gorakhpur.

The prosecution case as per the First Information Report lodged on 30.07.2021 by Mahendra Yadav the father of the deceased Smt. Chinta Yadav against Sangam Yadav her husband, Bindu Devi (the present applicant) and Manisha the nand is that the deceased was married to Sangam Yadav on 19.06.2020. There was a demand of Rs. 5

lakhs as dowry by the accused persons and due to the non fulfillment of the same, she used to be beaten, tortured and mentally harassed. The same was informed by his daughter to him after which he requested the accused persons not to do it but there was no improvement in their conduct. On 20.07.2021 at about 02:00 pm, the accused persons tortured the deceased a lot which was informed by her through telephone to the first informant and after getting annoyed due to the same, the accused persons murdered her by pressing her neck and even cremated her. The first informant came to know that his daughter has been murdered and then he got disturbed and became unconscious. The First Information Report is thus lodged.

Learned counsel for the applicant argued that the applicant is the mother-in-law of the deceased. It is argued that the deceased was cremated after giving information to her family members who had attended the cremation and as such no postmortem was conducted. Para 8 of the affidavit has been placed before the Court. It is argued that the incident in question is of 20.07.2021 of which the First Information Report has been lodged on 30.07.2021 which is after a delay of ten days without any plausible explanation about the delay which would go to show that the First Information Report has been lodged as an afterthought and with ulterior motives. Para 10 of the affidavit has been placed before the Court to buttress the said argument.

Learned counsel has further argued that general and omnibus allegations have been levelled against the applicant and other accused persons. It is argued that the deceased committed suicide in her room by locking the room from inside and after coming to know about the said fact, the son of the applicant himself made a telephonic call to the informant and when the informant came there and in his presence, the door of the room was broken then the body was taken out from the room. Para 7 of the affidavit has been placed before the Court for the same. It is argued that the applicant is a lady aged about 40 years and is suffering from kidney problems and other old age ailments. Para 13, 14 and 20 of the affidavit have been placed for the same. Learned counsel has further argued that the applicant is also entitled to the benefit of Section 437 Cr.P.C. It is argued that the deceased committed suicide and died and the cremation was done in presence of her family members and as such the lodging of the First Information Report after a delay of ten days would go to show that the same is an afterthought and with ulterior motives.

It is further argued that as a matter of fact, the deceased was not satisfied with her marriage. She used to fight and misbehave with the applicant and his family members as she was having a love affair with one boy and was intending to solemnize her marriage with the said boy but her parents forcibly married her with the son of the applicant. Para 6 of the affidavit has been placed before the Court for the same. She further argued that the applicant has no criminal history as stated in para 13 and is in jail since 03.08.2021.

Per contra, learned counsel for the State opposed the prayer for bail and argued that the deceased died in her matrimonial house after 13 months of her marriage. The death is unnatural. The dead body was not even subjected to postmortem examination and as such the cause of death could not be ascertained. It is argued that even there was no information to any of the authorities regarding the death of the deceased. It is argued that the first informant has stated that the dead body was cremated and then he came to know of the incident. It is argued that the applicant is named in the First Information Report and there are allegations against her. It is argued that there is no reason for false implication of the applicant and as such the prayer for bail of the applicant be rejected.

After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is named in the First Information Report. The deceased died within 13 months of her marriage in her matrimonial house. The applicant is also a resident in the same house. The dead body was cremated without even informing any authorities. The allegation is of cremation of the dead body without information to the family members of the deceased. The cause of death could not be ascertained as the body was not even subjected to postmortem examination. I do not find it a fit case for bail.

Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

The bail application is, accordingly, rejected.

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

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

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."

After rejection of the first bail application of the applicant the trial has started in which three prosecution witnesses being brother, father and mother of the deceased were examined who did not support the prosecution case and have been declared hostile. The co-accused Sangam Yadav the husband of the deceased has been granted bail vide order dated 27.9.2022 passed by a co-ordinate Bench of this Court. The said order is also quoted herein below:-

"Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

It is submitted by learned counsel for the applicant that he is innocent and has been falsely implicated in the present case for making demand of dowry and harassment of the deceased, who died of natural death. Further submitted that the deceased was wedded wife of the applicant, but with false allegation of making demand of dowry and harassment of the deceased, this F.I.R. was lodged after 10 days of the alleged incident by the informant with ulterior motive. At the time of death of the deceased, the informant and members of his family were present and cremation was also done. Thereafter when illegal demand was made by them, then this applicant failed to fulfil the same, that was the reason this f.I.R. was lodged. Further submitted that during trial statements of P.W.-1 and P.W.-2, father and mother of the deceased, have been recorded, in which they have not supported the prosecution version. In this way, no case of demand of dowry and harassment is made out against the applicant. Applicant is in jail since 03.08.2021 having no any criminal antecedent, therefore, he is entitled for bail. In case he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

Learned A.G.A. opposed the prayer for bail.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties and the statements of the P.W.-1 and P.W.-2 recorded before the learned trial court, in which they have not supported the prosecution version and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant Sangam Yadav involved in Session Case No. 2266 of 2021, Case Crime No. 281 of 2021, under Sections 498-A, 304-B, 201 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station-Jhangaha, District-Gorakhpur be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

1. The applicant will not tamper with the evidence during the trial.
2. The applicant will not pressurize/ intimidate the prosecution witness.
3. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.
4. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected of the commission of which he is suspected.
5. 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.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court."

Looking to the facts and circumstances of the case and particularly the fact that three prosecution witnesses being brother, father and mother of the deceased not supporting the prosecution case and being declared hostile, the co-accused Sangam Yadav who is husband of the deceased being granted bail and the fact that the applicant is mother-in-law of the deceased and is a lady, this Court is of the view that the applicant may be enlarged on bail.

Let the applicant- Bindu Devi, 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 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 she 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 her 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 her, in accordance with law, under section 174-A I.P.C.

(V) The applicant shall remain present, in person, before the 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 the trial court 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 against her in accordance with law and the trial court may proceed against her 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 the applicant.

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.

The bail application is allowed.

(Samit Gopal,J.) Order Date :- 31.10.2022 Naresh