

Amit Gupta vs State Of U.P. on 4 September, 2024

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2024:AHC:143539

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 54506 of 2023

Applicant :- Amit Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Upendra Upadhyay, learned counsel for the applicant, Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.
2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Amit Gupta, seeking enlargement on bail during trial in connection with Case Crime No. 574 of 2020, under Section 498-A, 306, 504, 34 I.P.C. and 3/4 Dowry Prohibition Act, registered at Police Station Jaithara, District Etah
3. This is a second bail application. The first bail application of the applicant was rejected vide order dated 9.8.2023 passed by this Court passed in Criminal Misc. Bail Application No. 17844 of 2021.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that there is no abetment or instigation by the applicant. It is argued that in order to charge an accused under Section 306 IPC, there must be active role of instigation by the accused and there should be a clear mens-rea, merely harassment is not sufficient to hold an accused guilty of abetment. He has relied upon the judgement of the Apex Court in the case of Shabbir Hussain Vs. State of Madhya Pradesh and others : Special Leave To Appeal (Crl.) No. 7284 of 2017 decided on 26.7.2021 and in the case of Naresh Kumar Vs. State of Haryana : Special Leave Petition (Crl.) No.8873 of 2008 decided on 22.2.2024 (para 22). As such the applicant be enlarged on bail, he is in jail since 25.12.2020.

5. Per contra learned counsel for the State opposed the prayer for bail.

6. After hearing the counsel for the parties and perusing the record, it is evident that the first bail application of the applicant was rejected by this Court vide order dated 9.8.2023. The said order reads as under:-

"1. Heard Sri Upendra Upadhyay, learned counsel for the applicant, Sri Niklank Kumar Jain, learned counsel for the first informant and Sri Virendra Pratap Singh, learned counsel for the State and perused the material on record.

2. Learned counsel for the applicant states that he does not intend to file any supplementary affidavit for which he had sought time on 18.01.2023. He further submits that he does not intend to file any rejoinder affidavit to the counter affidavit filed on behalf of the first informant.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Amit Gupta, seeking enlargement on bail during trial in connection with Case Crime No. 574 of 2020, under Section 498-A, 306, 504, 34 I.P.C. and 3/4 Dowry Prohibition Act, registered at Police Station Jaithara, District Etah.

4. The first information report of the present matter was lodged on 23.12.2020 by Brij Mohan against the applicant, Anil Gupta, Ashish Gupta and mother-in-law alleging therein that his daughter Khushbu Gupta was married with Amit Gupta the applicant on 02.12.2010 in which he had given lot of gifts and dowry and spend around 10 lakhs. The accused persons were not satisfied with the gifts and dowry and had beaten his daughter many times, thrown her out of the house regarding which a case is going on. On 22.12.2020 at about 6 pm Anil Gupta behaved improperly with his daughter Kushboo Gupta regarding which she had made a complaint to her husband Amit Gupta on which he took side of his father. Anil Gupta came there and started abusing her and denied the allegations. He took his daughter inside a room where with the help of the other accused persons his daughter was hanged to death.

5. Learned counsel for the applicant argued that although the applicant is the husband of the deceased but has been falsely implicated in the present case. It is argued that the first information report was lodged under sections 498-A, 302, 354, 504, 34 and 3/4 Dowry Prohibition Act but the matter was investigated after which the case under section 302 I.P.C. was converted into a case under section 306 I.P.C. and section 354 I.P.C. was deleted. It is argued that the deceased committed suicide and died which is evident from the postmortem examination report wherein the doctor found a ligature mark on the body of the deceased and opined the cause of death as asphyxia as a result of antemortem hanging. Learned counsel for the applicant argued that there is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased, the applicant has no mens-rea at all, there is no overt act whatsoever of the applicant, which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence. The applicant has no criminal antecedent as stated in para 03 of the affidavit and is in jail since 25.12.2020.

6. Per contra, learned counsel for the first informant and learned counsel for the State vehemently opposed the prayer for bail and argued that the applicant is the husband of the deceased. It is argued that the applicant is named in the first information report and there are allegations against him. Learned counsel has further argued that the doctor conducting the postmortem examination found a suicide note of the deceased which is referred to in the postmortem examination report also as enclosure no.11. It is argued that reading of the said suicide note which is at page 34 of the paper-book would go to show that the applicant had been instrumental in torturing and troubling the deceased a lot. Due to the torture, beating and troubles created by the applicant the deceased was compelled to commit suicide. Learned counsel for the first informant further placed paragraph 7 of his counter affidavit and has argued that the conduct of the applicant is not aboveboard . The torture given to the deceased by the applicant and his family members is apparent from the fact that on 16.05.2018 first information report was lodged by the deceased Khushboo Gupta herself as Crime No. 87 of 2018, under Section 498-A, 323, 504 I.P.C. & Section 3/4 Dowry Prohibition Act, P.S. Ocha, District Mainpuri regarding the demand of dowry, harassing and torture metted to her. It is argued that as such bail application deserves to be rejected.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is the husband of the deceased. There is a suicide note of the deceased levelling serious allegations against the applicant. Even previously the deceased had lodged a first information report against the applicant and his family members regarding beating, demand of dowry, harassing to her by them. The said fact goes to show the motive of the applicant and also the fact that the deceased was being continuously harassed and tortured. No ground is made out.

8. Looking to the facts and circumstances of the case, this Court does not find it a fit case for bail, hence, the bail application is rejected."

7. In so far as the argument as advanced is related, the same was even previously argued and considered while deciding the first bail application. The judgement of the Apex Court in the case of Naresh Kumar (Supra) as is being relied upon by learned counsel for the applicant is not applicable in the present case at this stage since the said judgement was after trial court convicted the accused against which an appeal was preferred to the High Court which was dismissed and then the said judgement and orders were challenged before the Apex Court. In the said case the entire evidence was led and the stage was thus after the evidence was over. In the present case the stage is that trial is pending. In so far as the judgement of Shabbir Hussain (Supra) is concerned, the same was after investigation, filing of charge sheet and commencement of trial, as such even the stage in the present case is different as that of the said case. Even otherwise the fact that previously the deceased had lodged a FIR against the applicant and his family members regarding beating, demand of dowry and harassment to her by them cannot be over looked and goes to show that the accused had mens-rea. The said fact shows the motive to the applicant and continuous harassment and torture to the deceased.

8. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is rejected.

(Samit Gopal, J.) Order Date :- 4.9.2024 Gaurav Kuls