

Santosh Rawat vs State Of U.P. on 27 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. - 9243 of 2021

Applicant :- Santosh Rawat

Opposite Party :- State of U.P.

Counsel for Applicant :- Jagat Narayan Mishra,Araf Khan,Lihazur Rahman Khan,Mahendra Tri

Counsel for Opposite Party :- G.A.,Manoj Kumar Mishra

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Ms. Sonakshi Arora, learned counsel for applicant and Shri Munney Lal, learned A.G.A. for State.

2. The applicant has approached this Court by way of filing the present Criminal Misc. Bail Application seeking enlargement on bail in Case Crime No.362 of 2020, under Sections 498A, 304B IPC and Section 3/4 D.P. Act, Police Station - Malpura, District - Agra, after rejection of his Bail Application, vide order dated 6.1.2021, passed by Sessions Judge, Agra.

3. The husband of deceased is facing trial for the above referred offences that his wife died under other than normal circumstances before completing three years of her marriage. According to post-mortem report, cause of death is opined due to asphyxia, as a result of ante-mortem hanging. The viscera was also preserved, however, no poisonous substance was found. There are allegation against applicant with regard to demand of dowry of Rs.5 lakh in cash.

4. Ms. Sonakshi Arora, learned counsel for applicant has vehemently argued on fact as well as on law in support of prayer of this application to grant bail to the applicant. First argument is with regard to the over implication of accused person as in First Information Report along with applicant as many as four other family members were made accused raising general and vague allegations with regard to demand of dowry and cruelty. However, during investigation, allegations made against the family members were found incorrect and charge sheet was filed only against the applicant.

5. She further submits that it is a case of suicide which is corroborated by opinion of doctor in the post-mortem report that immediate cause of death was asphyxia due to ante-mortem hanging though viscera was preserved but in its chemical analysis, no poisonous substance was found. There was no prior complaint either on behalf of deceased or their parental family members about any cruelty or demand of dowry.

6. Applicant is not financially strong person and he has not able to engage any Advocate during trial and Amicus Curiae was appointed by Trial Court which is recorded in the order dated 23.11.2021, part of this application, and till date, not a single witness has been examined. Applicant is languishing in jail since 26.9.2020 i.e. about 1 year and 8 months.

7. Lastly, she fairly submits that an alternative charge under Section 302 IPC is also framed against applicant, however, no evidence is collected during investigation with regard to the offence of murder. The allegation of demand of dowry of car or Rs.5 lakh in cash against all the accused persons named in First Information Report, are general and vague. There is no evidence that deceased has suffered any cruelty for and in connection with demand of dowry before her death. Applicant is innocent and languishing in jail since 26.9.2020 and as such, applicant is entitled for bail.

8. Per Contra, Shri Munney Lal, learned A.G.A. has opposed the prayer of bail and submits that wife of applicant died under other than normal circumstances within three years of her marriage with specific allegations in the First Information Report against the applicant as well as statements of witnesses recorded during investigation. However, he has not able to dispute that initially including applicant, four persons from family of husband was also named, however, after investigation, no case was found and all the allegations are found false against them and charge sheet has been filed only against the applicant.

LAW ON BAIL

9. 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) 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 other, 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 presences 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." In Ishwarji Nagaji Mali vs. State of Gujarat and another 2022 SCC OnLine SC 55 Supreme Court has observed that 'merely because the prosecution case rests upon circumstantial evidence cannot be a ground to release the accused on bail, if during the course of investigation the evidence/material has been collected and prima facie, the complete chain of events is established.' 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." (Prahlaad 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) 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 (2022)3 SCC501).

10. Considering the submissions made by learned counsel for rival parties as well as material on record, it appears that deceased died within three years of her marriage under other than normal circumstances and immediate cause of death was opined to be asphyxia due to ante-mortem injuries yet I find merit in the argument of learned counsel for applicant that it is a case of over implication as First Information Report was lodged against five persons including applicant, however, after investigation, allegations were found false against the other family members of applicant and charge sheet was filed only against applicant and that there is no prima facie evidence of any prior complaint or any incident with regard to allegation of committing cruelty or harassment for or in connection with demand of dowry by applicant upon deceased. Considering that applicant is in jail for about 1 year and 8 months and till date, not a single witness was examined, therefore, only on the basis of his relationship with deceased as her husband could not be a ground to reject the bail of the applicant ignoring above factors, therefore, this Court is of the view that a case for bail is made out.

8. Let applicant - Santosh Rawat 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 complainant in any manner whatsoever. He shall report at the concerned police station once in a month.

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.

9. 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.

10. The bail application is allowed.

11. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application.

12. It is expected from the trial court that trial of this case will be concluded expeditiously and while granting any adjournment, trial court will take note of the provisions of Section 309 Cr.P.C.

13. The concerned Trial Court shall make all possible efforts/endeavour and conclude the trial of abovementioned case, expeditiously, preferably within a period of one year from today, in accordance with law.

Order Date :- 27.5.2022 Rishabh [Saurabh Shyam Shamshery, J.]