

Kaushal Kumar vs State Of U.P. on 19 April, 2023

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4251 of 2023

Applicant :- Kaushal Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Adarsh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

Heard Sri Adarsh Kumar Shukla, learned counsel for applicant and Sri Sunil Srivastava, learned A.G.A. for State.

Applicant- Kaushal Kumar, has approached this Court by way of filing the present Criminal Misc. Bail Application under Section 439 Cr.P.C. in Case Crime No.70 of 2022 under Sections 498A, 304B I.P.C. and 3/4 of Dowry Prohibition Act, Police Station- Jogiya Udaypur, District - Siddharthnagar after rejection of his Bail Application vide order dated 25.07.2022 passed by Additional District and Sessions Judge/F.T.C. Court No.1, Siddharthnagar.

Applicant before this Court is husband of deceased who died otherwise than under normal circumstances within a short period of one year of her marriage. According to post-mortem report, immediate cause of death was 'Asphyxia' due to ante-mortem hanging as well as there are consistent evidence against applicant and co-accused that they have demanded Rs.5,00,000/- and for that they

have committed cruelty with deceased.

Learned counsel for applicant submits that F.I.R. was lodged after two days of alleged incident, despite informant and his family members were present during inquest proceedings. The statement of witnesses are only general in nature and no date or month has been specified in statements regarding demand of dowry as well as that father-in-law and mother-in-law of deceased have already been granted bail by this Court.

Learned counsel for applicant submits that applicant is behind the bar since 12.07.2022 and in case, he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

Learned A.G.A. for State has opposed the above submissions and submits that applicant was not present when inquest was done and witnesses in their statements have specifically stated about demand of dowry and harassment in pursuance thereof. In the circumstances, when parents have lost their young daughter, delay of two days in lodging F.I.R. may not have any adverse effect. It is not disputed that father-in-law and mother-in-law have already been granted bail.

LAW ON BAIL - A SUMMARY (A) The basic rule may perhaps be tersely put as bail, not jail.

(B) Power to grant bail under Section 439 Cr.P.C., is of wide amplitude but not an unfettered discretion, which calls for exercise in a judicious manner and not as a matter of course or in whimsical manner.

(C) While passing an order on an application for grant of bail, there is no need to record elaborate details to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal. However, a Court cannot completely divorce its decision from material aspects of the case such as allegations made against accused; nature and gravity of accusation; having common object or intention; severity of punishment if allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of witnesses being influenced by accused; tampering of evidence; character, behaviour, means, position and standing of accused; likelihood of offence being repeated; the frivolity in the case of prosecution; criminal antecedents of accused and a prima facie satisfaction of Court in support of charge against accused. The Court may also take note of participation or part of an unlawful assembly as well as that circumstantial evidence not being a ground to grant bail, if the evidence/ material collected establishes prima facie a complete chain of events. Parity may not be an only ground but remains a relevant factor for consideration of application for bail.

(D) Over crowding of jail and gross delay in disposal of cases when undertrials are forced to remain in jail (not due to their fault) may give rise to possible situations that may justify invocation of Article 21 of Constitution, may also be considered along with other factors.

(See, State Of Rajasthan, Jaipur vs. Balchand @ Baliay (AIR 1977 SC 2447 : 1978 SCR (1) 535; Gurcharan Singh vs. State (Delhi Administration), (1978) 1 SCC 118); State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21; Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr (2010)14 SCC 496;

Mahipal vs. Rajesh Kumar, (2020) 2 SCC 118; Ishwarji Mali vs. State of Gujarat and another, 2022 SCC OnLine SC 55; Manno Lal Jaiswal vs. The State of U.P. and others, 2022 SCC OnLine SC 89; Ashim vs. National Investigation Agency (2022) 1 SCC 695; Ms. Y vs. State of Rajasthan and Anr :2022 SCC OnLine SC 458; Manoj Kumar Khokhar vs. State of Rajasthan and Anr. (2022)3 SCC 501; and, Deepak Yadav vs. State of U.P. and Anr. (2022)8 SCC 559) In the present case, wife of applicant has died within one year of her marriage otherwise than under normal circumstances. There is an evidence that applicant and co-accused have demanded dowry, however, still there is a merit in argument of learned counsel for applicant that evidence is similar in nature against the applicant, his father and mother, who have already granted bail as well as that it has not been specified in statements of witnesses about time line of demand of dowry so that it may prima facie fall within ambit of 'soon before death', therefore, in the considered opinion of Court, applicant being husband of deceased may not be a negative factor for consideration of bail application, therefore, he has also made out a case of bail.

Let the applicant- Kaushal Kumar 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 shall file an undertaking to the effect that he shall not seek any adjournment or exemption from appearance on the date fixed in trial. 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.
- (iii) 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.
- (iv) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously, preferably within a period of six months after release of applicant, if there is no other legal impediment.

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.

Order Date :- 19.4.2023 P. Pandey