

## Kayyum vs State Of U.P. on 16 May, 2023

**Author: Saurabh Shyam Shamshery**

**Bench: Saurabh Shyam Shamshery**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:106667

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2363 of 2023

Applicant :- Kayyum

Opposite Party :- State of U.P.

Counsel for Applicant :- Shahid Ali Siddiqui, Ritesh Singh, Suresh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

Applicant- Kayyum has approached this Court for bail in Case Crime No. 313 of 2022 under Sections 498-A, 304-B I.P.C. and 3/4 of D.P. Act, 1961, Police Station- Katra, District- Shahjahanpur.

In the present case, applicant is father in law of deceased who died after sixteen months of her marriage. The immediate cause of death was opined as septicoma shock due to ante mortem burn injuries up to 85%.

Sri Suresh Singh, learned counsel for applicant submits that there is a dying declaration of victim that she herself put kerosene and ablaze herself, though it has been mentioned that all accused including applicant have harassed her; learned counsel further submits that during investigation, statements of relatives of deceased were recorded and it appears that there were omnibus and general allegations against the accused persons; father of deceased has filed an affidavit that allegations against accused were wrongly mentioned in F.I.R.; therefore, applicant, who is in jail since 24.11.2022 may be released on bail during trial.

Sri Sunil Srivastava, learned AGA appearing for State has opposed the bail and submitted that all ingredients of 'dowry death' are prima facie present and that in dying declaration also, there are allegations against applicant that he also harassed the deceased as well as that there is evidence that applicant has also committed cruelty with deceased in regard to demand of dowry; therefore, he may not be 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, the applicant before this Court is father in law of deceased who is in jail since 24.11.2022. There is a substance in argument of learned counsel for applicant that allegations against all accused persons including applicant appear to be omnibus and general in nature and that there is no specific allegation against applicant. The dying declaration also contains omnibus and general allegations against applicant and other co-accused persons.

In these circumstances, considering the nature of evidence as well as relation of applicant with decaesed, I find that applicant has made out a case for bail.

Let the applicant- Kayyum 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.

(v) Applicant has to appear on each and every date before learned trial Court and any application for exemption of his appearance on vague ground could be a ground for cancellation of bail by learned trial Court immediately.

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.

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

Order Date :- 16.5.2023 Nirmal Sinha