

Kolindar Singh @ Kolindra vs State Of U.P. on 4 December, 2023

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:233749

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42295 of 2023

Applicant :- Kolindar Singh @ Kolindra

Opposite Party :- State of U.P.

Counsel for Applicant :- Braham Singh, Sushil Kumar Tewari

Counsel for Opposite Party :- G.A., A Kumar Srivastava

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44916 of 2022

Applicant :- Ram Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Sushil Kumar Tewari, Braham Singh

Counsel for Opposite Party :- G.A., A Kumar Srivastava

Hon'ble Rajeev Misra, J.

Heard Mr. Braham Singh, the learned counsel for applicants, the learned A.G.A. for State and Mr. Ran Vijay Singh, Advocate holding brief of Mr. A. Kumar Srivastava, the learned counsel representing first informant.

These applications for bail have been filed by applicants Kolindar Singh @ Kolindra and Ram Singh seeking their enlargement on bail in Case Crime No.186 of 2022, under Sections 498-A, 304-B, 307, 323 IPC and Section 3/4 Dowry Prohibition Act, police station Seohara, district Bijnor, during the pendency of trial.

Perused the record.

Record shows that marriage of applicant Kolindar Singh was solemnized with Amisha (daughter of first informant) on 27.01.2016 in accordance with Hindu rites and custom. However, Just after expiry of a period of six years and three months from the date of marriage of the applicant, an unfortunate incident occurred on 18.04.2022 in which the wife of applicant sustained burn injuries.

It is the case of the applicants that the injured was taken to the hospital on the same day i.e. 18.04.2022. While the victim was undergoing treatment, her statement under Section 164 CrPC was recorded by the Naib Tehsildar on 18.04.2022. The same is on record as Annexure-'4' to the affidavit filed in support of bail application of Kolindar Singh. Ultimately, the victim succumbed to the burn injuries sustained by her on 24.04.2022.

Subsequent to above occurrence, first information report dated 18.04.2022 was lodged by Mahendra Singh (father of the victim) and was registered as Case Crime No.0186 of 2022, under Sections 498-A, 323, 307 IPC and Section 3/4 Dowry Prohibition Act, police station Seohara, district Bijnor. In the aforesaid FIR, six persons, namely; Kolindar (applicant herein), Birmo Devi; Ram Singh (applicant herein); Anju; Ashoka and Harendra have been nominated as named accused.

It is apposite to mention here that while the victim was undergoing treatment at Safdarjung Hospital, she ultimately succumbed to the burn injuries sustained by her on 24.04.2022. Accordingly, the post-mortem of body of the deceased was conducted at Safdarganj Hospital, New Delhi. In the opinion of autopsy surgeon who conducted autopsy of body of the deceased cause of death of deceased was Septic shock as a result of infected antemortem thermal flame burns involving about 90% of total body surface area. However viscera has been preserved to rule out any concomitant poisoning.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. He examined the first informant and other witnesses under Section 161 CrPC. The witnesses so examined have substantially supported the FIR. On the basis of above and other material collected by the Investigating Officer during the course of investigation, he came to the conclusion that complicity of four of the named accused, namely, Kolindar Singh (husband), Ram Singh (father-in-law) (applicants herein), Smt. Birmo (mother-in-law) and Harendra Singh (Nandoi) of the deceased is established in the crime in question. He, accordingly, submitted the charge-sheet dated 11.04.2023, whereby aforementioned

four named accused have been charge-sheeted under Sections 498-A, 304-B, 307, 323 IPC and Section 3/4 Dowry Prohibition Act, whereas Anju (Nanad of the deceased) has been exculpated.

At the very outset, the learned A.G.A. submits that bail application of named/charge-sheeted co-accused Harendra Singh (Nandoi of the deceased) has already been rejected by this Court vide order dated 06.01.2023 passed in Criminal Misc. Bail Application No.44764 of 2022 (Harendra Singh Vs. State of U.P.). For ready reference, the same is reproduced herein-under :-

"1. Heard Sri Gaurav Kakkar, learned counsel for the applicant, Sri A Kumar Srivastava, learned counsel for the first informant as well as Sri Vibhav Anand Singh, learned A.G.A. for the State and perused the material placed on record.

2. Applicant seeks bail in Case Crime No. 186 of 2022, U/S 498-A, 304-B, 307, 323 IPC and 3/4 Dowry Prohibition Act, Police Station Sheohara, District Bijnor, during the pendency of trial.

3. As per prosecution story, the applicant and the co-accused persons namely, husband, father-in-law and mother-in-law are stated to have subjected the deceased person to cruelty for a demand of dowry and ensuing the said demand, the applicant, who happens to be brother-in-law of the husband of the deceased alongwith other co-accused persons, is stated to have assaulted her with knife and later on are stated to have sprinkled kerosene oil on her and set her ablaze leading to her death later on.

4. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. Learned counsel has stated that applicant is brother-in-law of the husband of the deceased and lives 65 kms away from the scene of occurrence. Learned counsel has claimed alibi of the applicant as he was busy in the Haldi ceremony of his niece. Learned counsel has next stated that the said fact stands substantiated by the fact that one co-accused person, who is the wife of the applicant, has been exonerated by the police during investigation. Learned counsel has next stated that the victim herself out of rage, had tried to set herself ablaze and accidentally, she caught fire and thereby got burnt and succumbed to the burn injuries sustained. Learned counsel has next submitted that the dying declaration is tutored one and his name has been introduced later on. Learned counsel has also submitted that there are no allegations, whatsoever in the FIR or in the statement recorded under Section 161 Cr.P.C. or in the dying declaration that the applicant had demanded any dowry from the deceased. It is further stated that it is alleged in the FIR that there are injuries inflicted by knife to the deceased person, which do not find substantiated by the post-mortem report or the injury report, which have been filed alongwith the affidavit.

5. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances

which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 23.5.2022. In case, the applicant is released on bail, he will not misuse the liberty of bail.

6. Per contra, learned A.G.A. and learned counsel for the first informant have vehemently opposed the bail application on the ground that the dying declaration categorically indicates that the applicant was present at the time of occurrence alongwith father-in-law and mother-in-law of the deceased person and the said dying declaration has been duly recorded in the form of questions and answers. Learned A.G.A. has also stated that the statement of the victim was recorded by the investigating officer, which also corroborates the allegations levelled in the FIR which tantamounts to dying declaration. Learned counsel has next stated that the statement before the investigating officer tantamounts to dying declaration. Had the dying declaration not been recorded under due provisions of law, then even the statement of the victim recorded before the investigating officer would have fallen within the category of dying declaration.

7. Considering the facts and circumstances of the case, submissions advanced by learned counsel for the parties, nature of offence, evidence on record, the presence of dying declaration including the statement before the investigating officer and the injury report, post-mortem report, pending trial and considering the complicity of accused, severity of punishment, at this stage, without expressing any opinion on the merits of the case, this Court is not inclined to release the applicant on bail.

8. The bail application is, accordingly, rejected.

9. However, it is directed that the court below may proceed with the trial and reach at the logical conclusion expeditiously, if there is no legal impediment, within a period of one year from the date of production of a certified copy of this order.

10. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

Similarly, bail application of another named/charge-sheeted co-accused Smt. Birmo (mother-in-law of the deceased) has also been rejected by this Court vide order dated 11.04.2023 passed in Criminal Misc. Bail Application No.44940 of 2022 (Smt.Birmo Vs. State of U.P.). For ready reference, the order reads as under :-

"Heard learned counsel for the applicant, learned Additional Government Advocate representing the State and learned counsel appearing on behalf of the informant.

By means of this application under Section 439 of Cr.P.C., applicant-Smt. Birmo, who is involved in Case Crime No. 186 of 2022, under Sections 498-A, 304-B, 307, 323 IPC and Sections 3/4 of Dowry Prohibition Act, Police Station Seohara, District Bijnor, seeks enlargement on bail during the pendency of trial.

As per prosecution case in brief, informant Mahendra Singh, father of the deceased lodged an F.I.R. on 18.04.2022 against Smt. Birmo (present applicant) and five others namely Kolinder, Ram Singh, Anju, Ashoka and Harendra alleging inter-alia that the marriage of his daughter was solemnized with Kolinder six years back. After the marriage, aforesaid accused persons started harassing and torturing his daughter and started making additional demand of Rs. 5,00,000/- and on non-fulfillment of their demand, all the accused persons assaulted her with knife and later on sprinkled kerosene oil on her and set her ablaze to death.

It is argued by learned counsel for the applicant that the applicant is absolutely innocent and has been falsely implicated in the present case. It is next argued that applicant is mother-in-law of the deceased. During investigation, wife of co-accused Harendra Singh has been exonerated by the police. Learned counsel has next stated that the victim herself out of rage, had tried to set herself ablaze and accidentally, she caught fire and thereby got burnt and succumbed to the burn injuries sustained. Learned counsel has next submitted that the dying declaration is tutored one and her name has been introduced later on. Learned counsel has also submitted that there are no allegations, whatsoever in the FIR or in the statement recorded under Section 161 Cr.P.C. or in the dying declaration that the applicant had demanded any dowry from the deceased. It is further stated that it is alleged in the FIR that there are injuries inflicted by knife to the deceased, which do not find substantiated by the post-mortem report or the injury report, which have been filed alongwith the affidavit. Applicant has no criminal history to her credit and is languishing in jail since 09.05.2022.

Per contra, learned A.G.A. and learned counsel for the informant opposed the prayer for bail of the applicant by contending that the dying declaration categorically indicates that the applicant was present at the time of occurrence. The said dying declaration has been duly recorded in the form of questions and answers. Learned A.G.A. has also stated that the statement of the victim was recorded by the investigating officer, which also corroborates the allegations levelled in the FIR which tantamounts to dying declaration. It is further submitted that the bail application of co-accused Harendra Singh was rejected by the co-ordinate Bench of this Court vide order dated 06.01.2023 in Criminal Misc. Bail Application No. 44764 of 2022.

Having heard learned counsel for the parties and examined the matter in its entirety, I find that the deceased died her unnatural death in her matrimonial home. In the dying declaration, there is specific allegation against the applicant, which cannot be ignored and disbelieved at this stage. Bail application of co-accused Harendra Singh,

under similar accusation, was rejected, as noted above. The offence is heinous in nature. Considering the manner in which the crime has been committed, as noted above, the bail application of the applicant is not liable to be allowed.

Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties, gravity of offence, role assigned to applicant, nature of injury, presence of dying declaration and severity of punishment, I do not find any good ground to release the applicant on bail.

Accordingly, the bail application is rejected.

It is made clear that the observation contained in the instant order is confined to the issue of bail and shall not affect the merit of the trial."

On the above premise, the learned A.G.A. submits that since present applicants are husband and father-in-law of the deceased therefore, no indulgence be granted by this Court.

According to the learned A.G.A., the statement of the victim was recorded under Section 164 CrPC, which has now been treated as dying declaration, as the deceased died shortly after giving her aforesaid statement on 18.04.2022 to the Naib Tehsildar. Therefore, the same shall be treated as a dying declaration and is admissible in evidence under Section 34 of the Indian Evidence Act. The deceased in her aforesaid statement has clearly implicated the charge-sheeted accused for immolating her. However, in her aforesaid statement the deceased has alleged that additional demand of dowry was made by the father-in-law, mother-in-law and the husband to the tune of rupees five lacs on account of which she was residing at her parental home.

Learned counsel for applicants when confronted with above submits that irrespective of the facts pointed out by the learned A.G.A. in opposition to the present applications for bail yet the applicants though named and charge-sheeted accused are liable to be enlarged on bail. Referring to the statement of the victim (dying declaration), he submits that no role has been assigned to the husband of the deceased i.e. applicant Kolindar Singh i.e. either pouring kerosene on the body of the victim or immolating her. He, therefore, submits that as per the dying declaration of the deceased, it cannot be said that her husband i.e. applicant Kolindar Singh is involved in immolating the victim. It is then contended that the autopsy surgeon who conducted autopsy of body of the deceased did not find any smell of kerosene on the body of the deceased nor any such material was collected by the Investigating Officer from the place of occurrence to show that kerosene was kept near the place of occurrence. With reference to the material on record, the learned counsel for applicants contends that father-in-law of the deceased i.e. Ram Singh was living separately at a distant place and since the father-in-law of the deceased was not residing with the deceased therefore no question of demand of dowry or commission of cruelty upon the deceased by the applicant Ram Singh, father-in-law of the deceased, can be inferred. Even otherwise, the dying declaration is false, inasmuch as, there is nothing on record to show the presence of applicant Ram Singh near the place of occurrence or at the time and place of occurrence. On the above conspectus, he submits that applicants are liable to be enlarged on bail.

Having heard the learned counsel for applicants, the learned A.G.A. for State and the learned counsel representing first informant this Court finds that it is an undisputed fact that the deceased is the wife/daughter-in-law of the applicants. The issue as to whether the father-in-law was present at the time and place of occurrence or not is a disputed defense of applicant Ram Singh which can more appropriately be dealt with by the trial court. Prima facie, the presence of accused-applicant Ram Singh at the time and place of occurrence is established as per the dying declaration of the deceased herself. No such material has been placed by the learned counsel for applicants on the basis of which the very credibility of the dying declaration could be doubted. In view of above, there is nothing on record to prima facie indicate that applicant Ram Singh was not present at the time and place of occurrence. So far as applicant Kolindar Singh is concerned, it is evident that applicant Kolindar Singh is the husband of the deceased. Admittedly, the death of the deceased has occurred in the house of applicants and within seven years of her marriage therefore beyond shadow of doubt it can be said that the death of the deceased is a dowry death. Since the applicant Kolindar Singh is the husband of the deceased and also an inmate of the house when the occurrence occurred therefore, the burden is upon the applicant Ram Singh to not only explain the manner of occurrence but also his innocence as per Sections 106 and 113-B of the Evidence Act. However, prima facie, upto this stage, applicant (Kolindar Singh) has miserably failed to discharge the said burden. Admittedly, in the dying declaration the deceased has clearly implicated applicant Kolindar Singh i.e. her husband for making demand of additional dowry to the tune of rupees five lacs from his parents. Apart from above, the Court further finds that bail applications of other two charge-sheeted co-accused have already been rejected by this Court after taking into consideration the facts and circumstances of the case. Up to this stage, no such evidence could be pointed out by the learned counsel for applicants on the basis of which it can be said that the case of present applicants is distinguishable from other two named/charge-sheeted co-accused whose bail applications have already been rejected by this Court.

Furthermore, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made, upon perusal of record this Court finds that applicants are named and charge-sheeted accused, applicant Kolindar Singh is the husband of the deceased, whereas applicant Ram Singh is the father-in-law of the deceased, in the dying declaration of the deceased the role of pouring kerosene and thereafter immolating the deceased has been assigned to other three charge-sheeted accused including father-in-law of the deceased, namely, Ram Singh, the bail applications of similarly situate and circumstanced co-accused have already been rejected by this Court, the Court does not find any distinguishable feature in the case of present applicant Ram Singh to distinguish his case from other two named and charge-sheeted co-accused and grant him bail, the issue as to whether the father-in-law along with others was residing at separate/distant place and therefore his presence at the time and place of occurrence is impossible is the disputed defense of applicant Ram Singh which can more appropriately be dealt with during the course of trial, but no inference qua the innocence of applicant Ram Singh can be inferred on the basis of same, applicant Kolindar Singh is the husband of the deceased and specific allegations regarding demand of dowry have been made by the deceased in her dying declaration against her husband i.e. applicant Kolindar Singh, her father-in-law as well as her mother-in-law regarding demand of additional dowry to the tune of rupees five lacs and commission of cruelty, the death of the deceased has taken place at her marital home and that too within seven years of her marriage therefore, the

same is a dowry death, consequently by reason of above and also the fact that applicant Kolindar Singh is the husband of the deceased and an inmate of the house therefore the burden is upon the applicant Kolindar Singh not only to explain the manner of occurrence but also his innocence as per Sections 106 and 113-B of the Evidence Act, however, upto this stage, the applicant Kolindar Singh has miserably failed to discharge the said burden therefore, irrespective of the fact that the applicants are men of clean antecedents having no criminal history to their credit, the period of incarceration undergone, the police report under Section 173 (2) CrPC has already been submitted therefore the entire evidence sought to be relied upon by the prosecution against the applicants stands crystalized therefore the varied submissions urged by the learned counsel for applicants, this Court does not find any new good or sufficient ground to enlarge the applicants on bail.

Accordingly, the applications for bail thus fail and are liable to be rejected.

They are accordingly rejected.

Order Date :- 4.12.2023.

Rks.