

Smt Rajansri vs State Of U.P. on 9 May, 2022

Author: Sanjay Kumar Pachori

Bench: Sanjay Kumar Pachori

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6563 of 2022

Applicant :- Smt Rajansri

Opposite Party :- State of U.P.

Counsel for Applicant :- Shashi Kumar Mishra, Bhavisya Sharma, Sarvesh Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Pachori, J.

Heard Sri Sarvesh Kumar Dubey, learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

The present bail application has been filed on behalf of applicant Smt. Rajansri under Section 439 of the Code of Criminal Procedure, with a prayer to release her on bail in Case Crime No. 116 of 2021 for offence punishable under Sections 498-A, 304-B, 302 and 316 of the Indian Penal Code and Section 3/4 of D.P. Act, P.S. Sikandarpur Vaishya, District Kasganj during pendency of the trial after rejecting the bail application of the applicant by the Sessions Judge, Kasganj, vide order dated 3.1.2022.

Brief facts of the case are that the first information report dated 23.6.2021 has been lodged by brother of the deceased against the applicant and three other named accused-persons including the husband of the deceased Arvind @ Tinku stating that marriage of his sister Beenu was solemnized

with son of the applicant, i.e., co-accused Arvind @ Tinku, one year prior to the incident. In the marriage, the first informant spent more money beyond his capacity. But, the applicant and other co-accused were not happy with the dowry. Due to this reason, they often used to commit marpeet with the deceased and used to threat the deceased. On 21.6.2021, at about 3:00 P.M., the applicant and other co-accused persons committed marpeet with the deceased with lathi and danda and strangled her, who was pregnant, as a result whereof, she died. Upon coming to know, the first informant reached at the matrimonial house of the deceased where the applicant and other co-accused persons fled away.

Before lodging of the first information report, inquest of the body of the deceased has been conducted on 22.6.2021 at 11:42 P.M. Post-mortem of the body of the deceased has also been conducted on 22.6.2021 at 2:00 P.M. As per post-mortem report, three abraded contusion were found on the neck of the deceased. The cause of death as opined by the doctor is asphyxia due to ante-mortem strangulation. After recording the statements of the prosecution witnesses, charge-sheet has been submitted against applicant and other co-accused persons including the husband of the deceased. The applicant arrested on 28.7.2021.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive as well as matrimonial dispute. The applicant is mother-in-law of the deceased. Age of the applicant is 60 years. It is further submitted that as per post-mortem report, the cause of death as opined by the doctor is asphyxia due to ante-mortem strangulation. No other external injury has been found on the person of the deceased. It is further submitted only general role of harassment and demand of dowry has been levelled against the applicant. No specific role or involvement has been attributed to the present applicant. It is further submitted that co-accused Arvind @ Tinku, husband of the deceased, has been granted bail by the court below by Special Judge, POCSO Act on 7.12.2021 under Juvenile Justice Act. It is further submitted that the applicant has no criminal history and is languishing in jail since 28.7.2021. It is lastly submitted that if the applicant is released on bail, she shall not misuse the liberty of bail.

Per contra, learned AGA has supported the order passed by the Sessions Court and vehemently opposed the prayer for grant of bail to the applicant and he further submits that the allegations involved are very serious in nature. He further submit that in case the applicant is released on bail, she will misuse the liberty of bail.

After considering the facts of the present case it prima facie appears that;

- (a) Applicant is mother-in-law of the deceased aged about 60 years old;
- (b) As per post-mortem report, cause of death is asphyxia due to ante-mortem strangulation and no other external injury was found on the person of the deceased;
- (c) Only general allegation of harassment and demand of dowry has been levelled against the applicant;

(d) No specific role or involvement has been attributed to the present applicant;

(c) Co-accused Arvind @ Tinku, i.e., the husband of the deceased, has been granted bail by the co-ordinate Bench of this Court under Juvenile Justice Act;

It is settled law that while granting bail, the court has to keep in mind the nature of accusation, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, her role and involvement in the offence, her involvement in other cases and reasonable apprehension of the witnesses being tampered with.

Taking into account the totality of facts and keeping in mind, the ratio of the Apex Court's judgment in the case of State of Rajasthan v. Balchand @ Baliay (1977) 4 SCC 308, Gudikanti Narasimhulu And Ors., v. Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429, Ram Govind Upadhyay v. Sudarshan Singh & Ors., (2002) 3 SCC 598, Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., (2010) 14 SCC 496 and Mahipal v. Rajesh Kumar & Anr., (2020) 2 SCC 118, the larger interest of the public/State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail. Hence, the present bail application is allowed.

Let applicant, Smt. Rajansri be released on bail in the aforesaid case crime number on her furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the court or to any police officer or tamper with the evidence.

(ii) The applicant shall not pressurize/intimidate the prosecution witnesses.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The applicant shall remain present before the trial court on each date fixed, either personally or through her counsel.

(vi) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the applicant is deliberate or without sufficient case, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance of law after the release of the applicant, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the applicant alongwith a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 9.5.2022 CS/-