

Maya Devi vs State Of U.P. on 31 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. - 38799 of 2020

Applicant :- Maya Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Brij Raj, Satyendra Kumar Singh

Counsel for Opposite Party :- G.A., Lakshman Tripathi

Hon'ble Sanjay Kumar Pachori, J.

Heard Shri Jai Prakash Singh, learned counsel for the applicant, Shri Manoj Kumar Dwivedi, learned A.G.A. for the State and perused the material on record. None appears for the first informant even in the revised call.

The present bail application has been filed on behalf of applicant Maya Devi under Section 439 of the Code of Criminal Procedure, with a prayer to release her on bail in Case Crime No. 0092 of 2020 for offence punishable under Sections 498A, 304B of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act, registered at Police Station Kotwali, District Varanasi, during pendency of the trial, after rejecting the bail application of the applicant by Sessions Judge, Varanasi vide order dated 25.9.2020.

Brief facts of the case are that the First Information Report dated 8.8.2020 has been lodged by father of the deceased against the applicant and four other named accused persons including the

husband of the deceased stating therein that the marriage of his daughter Saumya Yadav was solemnized with co-accused Abhishek Yadav on 24.2.2018. He had given sufficient dowry in the marriage. After the marriage, applicant and other co-accused persons were not satisfied with the dowry given in the marriage and they started to commit marpeet with the deceased by using filthy language. After that the deceased went to her parental house and told the first informant and other family members about the incident. After Vidai Ceremony when the deceased reached at her matrimonial house, the applicant and other co-accused persons have demanded Rs. 5,00,000/- as additional dowry. They also threatened her to pay Rs. 5,00,000/- as additional dowry otherwise they would perform the second marriage of her husband with one Roshni Singh. She complained about the incident before the Senior Superintendent of Police. After that daughter of the first informant has gone to her matrimonial house on some conditions. After some time, she told her mother on phone about the additional demand of dowry and harassment. On 8.8.2020, the applicant and other co-accused persons committed murder of his daughter.

Before lodging of the first information report, inquest proceedings were commenced on 8.8.2020 at 13.00 hours. Postmortem of the body of the deceased was conducted on 8.8.2020 at 4.00 p.m. As per inquest as well as postmortem report, except ligature mark no other external injury was found on the person of the deceased. After recording the statements of the first informant and other prosecution witnesses under Section 161, Cr.P.C., charge sheet has been submitted against the applicant and four other named co-accused persons. The applicant was arrested on 9.8.2020.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. The applicant is mother-in-law of the deceased. It is further submitted that marriage of her son was solemnized with the deceased on 24.2.2018. General allegation of demand of dowry, cruelty and harassment has been levelled against the applicant. No specific role or involvement has been attributed to the present applicant. It is further argued that except ligature mark no other external injury was found on the person of the deceased. It is further submitted that co-accused Natthu Yadav (father-in-law of the deceased) having similar role, has been granted bail by a Coordinate Bench of this Court vide order dated 6.4.2022 in Criminal Misc. Bail Application No. 10081 of 2022.

He has next argued that the applicant has no previous criminal history and if the applicant is released on bail, she shall not misuse the liberty of bail.

Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the applicant and submits that the allegations involved are very serious in nature and the delay in lodging the FIR cannot be said to be fatal to the case at this juncture while considering the application of bail. But he could not point out any material to the contrary. He further submits that in case the applicant is released on bail, she will again indulge in similar activities and will misuse the liberty of bail.

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

(a) The applicant is mother-in-law of the deceased;

- (b) Marriage of the son of the applicant was solemnized with the deceased on 24.2.2018;
- (c) General allegation of demand of dowry, cruelty and harassment has been levelled against the applicant;
- (d) No specific role or involvement has been attributed to the present applicant;
- (e) Except ligature mark no other external injury was found on the person of the deceased;
- (f) Co-accused Natthu Yadav (father-in-law of the deceased) having similar role, has been granted bail by a Coordinate Bench of this Court vide order dated 6.4.2022 in Criminal Misc. Bail Application No. 10081 of 2022.

It is a 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, his role and involvement in the offence, his 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, Maya Devi 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 cause, 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 with 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 :- 31.5.2022 T. Sinha