

Smt. Pushpa Devi vs State Of U.P. on 4 April, 2022

Author: Sanjay Kumar Pachori

Bench: Sanjay Kumar Pachori

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4040 of 2022

Applicant :- Smt. Pushpa Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Saurabh Chaturvedi

Counsel for Opposite Party :- G.A.,Dheeraj Kumar Singh

Hon'ble Sanjay Kumar Pachori,J.

Heard Shri I.K. Chaturvedi, learned Senior Counsel assisted by Shri Saurabh Chaturvedi, learned counsel for the applicant, learned A.G.A. for the State, Shri Dheeraj Kumar Singh, learned counsel for the first informant and perused the material on record.

The present bail application has been filed on behalf of applicant Smt. Pushpa Devi under Section 439 of the Code of Criminal Procedure, with a prayer to release him on bail in Case Crime No. 1497 of 2021 for offence punishable under Sections 498A, 304-B of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act, registered at Police Station Kavi Nagar, District Ghaziabad, during pendency of the trial, after rejecting the bail application of the applicant by Sessions Judge, Ghaziabad vide order dated 24.12.2021.

Brief facts of the case are that the First Information Report dated 5.9.2021 has been lodged by father of the deceased against the applicant and five other named co-accused persons including the

husband of the deceased stating that marriage of his daughter Sakshi @ Chanchal was solemnized on 26.4.2021 with co-accused Anuj. The applicant and other co-accused persons were not satisfied with the dowry given by the first informant in the marriage and they demanded Rs. 20,00,000/- and one Scorpio car. They started to harass his daughter and made cruelty with her. On 5.9.2021 at 1.55 a.m. first informant has been informed about the incident on phone. After that first informant reached matrimonial house of his daughter where he got information that his daughter has been taken by the police to Sarvodaya Hospital where his daughter was declared dead by the doctor. The applicant and other co-accused persons murdered his daughter for want of dowry.

Before lodging of the first information report, inquest of the body of the deceased was conducted on 5.9.2021 at 11.30 a.m. on the information of Ward Body of Sarvodaya Super Specialist Hospital and Heart Centre. Postmortem of the body of the deceased was conducted on 5.9.2021 at 2.00 p.m. As per postmortem report, cause of death is asphyxia due to ante mortem hanging. As per postmortem report as well as inquest report, except ligature mark no other external injury was found on the person of the deceased. After recording the statements of the prosecution witnesses under Section 161, Cr.P.C., charge sheet has been submitted against the applicant, his husband and co-accused Anuj (husband of the deceased) and the Investigating Officer has exonerated three named co-accused persons. The applicant was arrested on 11.9.2021.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to matrimonial dispute. The applicant is mother-in-law of the deceased. It is further submitted that except ligature mark no other injury was found on the person of the deceased. General allegation of demand of dowry, harassment and cruelty has been made against the applicant. No specific role or involvement has been attributed to the applicant. It is further submitted that co-accused Sompal (father-in-law of the deceased) has been granted bail by a Coordinate Bench of this Court vide order dated 9.3.2022 in Criminal Misc. Bail Application No. 3968 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. and learned counsel for the first informant have 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 they could not point out any material to the contrary. They further submit 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) Applicant is mother-in-law of the deceased;
- (b) Except ligature mark no other injury was found on the person of the deceased;

(c) General allegation of demand of dowry, harassment and cruelty has been levelled against the applicant ;

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

(e) Co-accused Sompal (father-in-law of the deceased) has been granted bail by a Coordinate Bench of this Court vide order dated 9.3.2022 in Criminal Misc. Bail Application No. 3968 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, Smt. Pushpa 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 :- 4.4.2022 T. Sinha