

Suman vs State Of U.P. on 9 October, 2023

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:194088

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51736 of 2022

Applicant :- Suman

Opposite Party :- State of U.P.

Counsel for Applicant :- Krishna Dutt Awasthi, Kamlesh Kumar Tripathi

Counsel for Opposite Party :- G.A., Badri Mani Tripathi

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Kamlesh Kumar Tripathi, learned counsel for the applicant, Sri Badri Mani Tripathi, learned counsel for the first informant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.

3. This second bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Suman, seeking enlargement on bail during trial in connection with Case Crime No. 8 of 2021, under Sections 498-A, 304-B, 323, 506, 307 IPC and 3/4 D.P. Act, registered at P.S. Erwa Katra, District Auraiya.

4. The first bail application of the applicant was rejected by this Court vide order dated 30.09.2021 passed in Crl. Misc. Bail Application No. 28564 of 2021 (Suman Vs. State of U.P.).

5. Learned counsel for the applicant argued that the role of firing upon the deceased Smt. Mohini @ Priyanka is assigned to co-accused Saurabh, Sunil and Aswani Kumar. It is argued that after rejection the first bail application of the applicant vide order dated 30.09.2021 by this Court, co-accused Munni Devi the mother-in-law of the deceased, Arun Kumar @ Bauva who was made an accused during investigation and Ravi Yadav who has also been made as an accused during investigation and co-accused Usha Devi who is the jethani of the deceased which are annexure 17 to 20 of the affidavit have been granted bail by different co-ordinate Benches of this Court. It is argued that the applicant is a lady and she is entitled to the benefit of Section 437 Cr.P.C. It is argued that co-accused Munni Devi, Arun Kumar @ Bauva, Ravi Yadav and Usha Devi have been granted bail by co-ordinate Benches of this Court vide orders dated 23.03.2022, 06.04.2022, 15.03.2022 and 08.08.2022 passed in Crl. Misc. Bail Application Nos. 45710 of 2021 (Munni Devi Vs. State of U.P.), 12 of 2022 (Arun Kumar @ Bauva Vs. State of U.P.), 48324 of 2021 (Ravi Yadav Vs. State of U.P.) and 34440 of 2022 (Usha Devi Vs. State of U.P.). Copy of the said orders are annexed as annexure 17 to 20 of the affidavit in support of the bail application. It is further argued that the bail is being pressed on the ground of parity of co-accused Munni Devi and Usha Devi. It is argued that the applicant has no criminal history as stated in para 35 of the affidavit and is in jail since 18.01.2021.

6. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail but could not dispute the grounds of the parity.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the first bail application was rejected vide order dated 30.09.2021. The said order reads as under:-

"Heard Sri Ansar Ahmad, learned counsel for the applicant, Sri Vinay Bhushan Upadhyay, Advocate holding brief of Sri Badri Mani Tripathi, learned counsel for the first informant and Sri S.B. Maurya, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Suman, seeking enlargement on bail during trial in connection with Case Crime No. 08 of 2021, under Sections 498-A, 304-B, 323, 506, 307 IPC and Section 3/4 D.P. Act, registered at P.S. Erwa Katra, District Auraiya.

The prosecution version as per the First Information Report lodged on 14.01.2021 by Rajendra Singh the father of the deceased Smt. Mohini @ Priyanka is that his daughter was married with Saurabh on 28.02.2017. After marriage there was a demand of Rs. 5 lakhs and a Swift Dezire car as dowry. His daughter used to be beaten, tortured and harassed due to the demand of dowry which was told many times by her to him. Saurabh the husband, Sunil the jeth, Smt. Usha Devi the jethani (wife of Sunil), mother-in-law Smt. Munni Devi, nand Smt. Suman (the present applicant) and nandoi Ashwani Kumar the husband of Smt. Suman used to beat her

for dowry. The first informant consoled his daughter many times but the accused persons did not mend their ways. Around two months back, his daughter was beaten and thrown out of the house and was asked to bring the money and vehicle and then she would be permitted entry in her matrimonial house after which she came to her parental house and was living there. On 13.01.2021 at about 07:30 pm, Saurabh, Sunil and Ashwani Kumar came and fired upon Mohini @ Priyanka due to which she died on the spot. Smt. Sharda Devi the wife of the first informant came on hearing the fire shots after which she was also fired upon by the accused persons who then ran away from the house. Virendra, Praveen and other persons of the village saw them running away and tried to apprehend them but they ran away in their car. Sharda Devi was taken to the hospital where she is being treated. The dead body of his daughter is lying in the house.

Learned counsel for the applicant argued that in so far as the applicant is concerned she has not been assigned role of firing but only general role has been assigned to her. The role of firing has been stated to be done by Saurabh, Sunil and Ashwani Kumar. It is argued that since the applicant has not been assigned any overt act, her role is distinguishable with that of co-accused Saurabh, Sunil and Ashwani Kumar.

It is further argued that even the injured Smt. Sharda Devi in her statement recorded under Section 161 Cr.P.C. has stated about firing by co-accused Saurabh, Sunil and Ashwani Kumar. It is argued that the applicant is the nand of the deceased and she has not been assigned any role of firing and as such her role is distinguishable. Learned counsel has argued that the applicant is residing at a different place being Etawah after being married with co-accused Ashwani Kumar on 05.03.2008 and has a boy who is aged about 11 years old. Paragraph nos. 19 & 23 of the affidavit and Annexure Nos. 13 and 14 being the Aadhar Card and the Ration Card respectively have been placed to buttress the said argument. The applicant is a lady and she is entitled to the benefit of Section 437 Cr.P.C. The applicant is in jail since 18.01.2021.

Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail. It is argued that the applicant is named in the First Information Report and there are allegations of demand of dowry, torture and harassment of the deceased by her along with other co-accused persons after which the deceased was thrown out of the house and was living in her parental house. It is further argued that the deceased has received firearm injury and the cause of death is coma as a result of firearm injury. It is further argued that Smt. Sharda Devi the mother of the deceased and the wife of the first informant has also received firearm wounds of entry and the doctor has opined the same to be dangerous to life. Even the supplementary medical examination states the said injuries to be dangerous to life. It is argued that the three accused persons namely Saurabh, Sunil and Ashwani Kumar were arrested from the house of the applicant. The applicant has active role in the present case as such the prayer for bail be rejected.

After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is named in the First Information Report and there are allegations of demand of dowry, torture and harassment of the deceased. The deceased died as a result of firearm injury. Smt. Sharda Devi the mother of the deceased has also received firearm injuries caused by the accused persons and her injuries were opined to be dangerous to life.

Considering the totality of the case in particular, nature of evidence available on record, nature of offence, the involvement of the applicant, her participation and the seriousness of the offence, I am not inclined to release the applicant on bail.

The bail application is, accordingly, rejected.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The computer generated copy of such order shall be self attested by the counsel of the party concerned.

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."

8. Co-accused Munni Devi, Arun Kumar @ Bauva, Ravi Yadav and Usha Devi have been granted. The said orders read as under:-

"Heard Sri Ansar Ahmad, learned counsel for the applicant, Sri Badri Mani Tripathi, learned counsel for the informant and Sri Sanjay Singh, learned AGA -I, appearing for the State and perused the material brought on record.

It has been contended by the learned counsel for the applicant that the applicant has been falsely implicated in the present case due to ulterior motive. Applicant is lady as well as mother-in-law of the deceased. It is next contended that injured Smt. Sharda Devi (mother of the deceased) has assigned specific role of firing upon the deceased to co-accused Saurav, Sunil and Ashwani by which deceased died. General role has been assigned to the applicant (mother-in-law of the deceased). Applicant has nothing to do with the present occurrence, as she was not the beneficiary of the alleged demand of dowry. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused has also been touched upon at length. It has been assured on behalf of the applicant that she is ready to cooperate with the process of law and shall faithfully make herself available before the court whenever required. It has also been submitted that the applicant is languishing in jail since 18.1.2021. It has been

pointed out that the applicant has no criminal history.

Learned A.G.A. as well as learned counsel for the informant have vehemently opposed the prayer.

Courts have taken notice of the overcrowding of jails during the current pandemic situation (Ref.: Suo Motu Writ Petition (c) No. 1/2020, Contagion of COVID 19 Virus in prisons before the Supreme Court of India). These circumstances shall also be factored in while considering bail applications on behalf of accused persons.

Having heard the submissions of learned counsel of both sides, nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment, and larger mandate of the Article 21 of the Constitution of India, the dictum of Apex Court in the case of Dataram Singh v. State of U.P. and another, reported in (2018) 2 SCC 22 and without expressing any opinion on the merit of the case, I find it to be a case of bail.

Let applicant- Munni Devi, be released on bail in Case Crime No. 08 of 2021, under Sections- 498A, 304B, 323, 506 IPC and Section 3/4 of D.P. Act, Police Station- Erawakatra, District- Auraiya, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions:-

1. The applicant will attend and co-operate the trial proceedings pending before the court concerned on the date fixed after release.
2. She will not tamper with the witnesses.
3. She will not indulge in any illegal activities during the bail period.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case."

and "Heard Sri Sanjay Mishra, learned counsel for the applicant, Sri Chandra Bhushan Singh, learned counsel for the first informant and learned A.G.A. for the State and perused the material on record.

The present bail application has been filed on behalf of applicant Arun Kumar @ Bauva under Section 439 of the Code of Criminal Procedure, with a prayer to release him on bail in Case Crime No. 8 of 2021 for offence punishable under Sections 302, 307, 120-B Indian Penal Code registered at Police Station Airwa Katra, District Auraiyya, during the pendency of the trial after rejecting the bail application of the applicant by the Sessions Judge, Auraiyya, vide order dated 16.07.2021.

Brief facts of the case are that the First Information Report dated 14.01.2021 has been lodged by Rajendra Singh father of the deceased Smt. Mohini @ Priyanka against six named persons stating therein that the marriage of his daughter was solemnized on 28.02.2017 with the accused Saurabh. After marriage, named co-accused persons demanded Rs. 5 lacs and a Swift Dezire Car as additional dowry. Due to this reason all the co-accused named persons used to be beaten, tortured and harassed, which was told by the deceased to the first informant repeatedly. The co-accused Saurabh is husband of the deceased and other five co-accused persons are family members of the co-accused Saurabh. The first informant contacted many times but the accused persons did not meant their ways. Two months ago his daughter was beaten and thrown out from the matrimonial house and asked to bring the money and vehicle. On 13.01.2021 at about 7.30 p.m., co-accused Saurabh, Sunil and Ashwani came and fired upon Mohini @ Priyanka due to which she died on the spot. Smt. Sharda Devi, wife of first informant came on hearing the fire shots after which she also fired upon by the accused persons who then ran away from the house of Virendra, Praveen and other persons of the village saw them running away and tried to apprehend then but they ran away in their car. Injured Sharda Devi was taken to the hospital, where she is being treated. The dead body of the daughter of the first informant lying in the house.

After lodging the first information report, inquest of the body of the deceased was conducted on 14.1.2021 at 9.45 A.M. Postmortem of the deceased was conducted on 14.1.2021 at 3.30 p.m. As per postmortem report, one fire arm injury wound of entry size 01x01cm round in shape present on Left parietal region just above 09 cm from upper part of Left ear Bullet found in emebbled in bone right lower occipital region. After recording the statement of the injured witness Sharda Devi, first informant Rajendra Singh and other eye witnesses, under section 161 Cr.P.C. The Investigating Officer filed charge sheet on 11.04.2021 and 07.09.2021 respectively. The applicant was arrested on 13.06.2021.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. It is further submitted that applicant is not named in the F.I.R. and the name of the applicant has surfaced on the basis of confessional statement of co-accused Saurabh. It is further submitted that role of fire shot upon the deceased has been attributed to the co-accused Saurabh, Sunil and Ashwani by the first informant and injured Smt. Sharda Devi. There is no Specific role has been attributed to the applicant by the injured as well as eye witness of the incident. It is further submitted that applicant has been arrested in a police encounter no injury case along-with other co-accused persons namely Saurabh and Ravi Yadav.

It has also been submitted that co-accused, Ravi Yadav having similar role, has already been enlarged on bail by the Coordinate Bench of this Court vide order dated 15.03.2022 in Criminal Misc. Bail Application No. 48324 of 2021 and the applicant is also entitled to be enlarged on bail on

the ground of parity. Learned counsel for the applicant also submitted that the applicant has no other previous criminal history. It is lastly submitted that if the applicant is released on bail, he shall not misuse the liberty of bail.

Per contra, learned A.G.A. as well as learned counsel for the first informant has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the applicant and they further submits that the allegations involved are very serious in nature. It is further submits that in case the applicant is released on bail, he will misuse the liberty of bail.

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

- (a) The applicant is not named in the F.I.R.;
- (b) The fire-arm injury was found on the person of deceased;
- (c) Role of fire shot has been assigned to the co-accused Saurabh, Sunil and Ashwani;
- (d) No Specific role has been attributed to the applicant by the injured as well as eye witness of the incident;
- (e) Co-accused, Ravi Yadav having similar role, has already been granted bail by the Co-ordinate Bench of this Court vide order dated 15.03.2022;

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, 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, Arun Kumar @ Bauva be released on bail in the aforesaid case crime number on his 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 him

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 he 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 his 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 along-with 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."

and "Heard Sri Anand Pati Tiwari, learned counsel for the applicant, Sri Chandra Bhushan Singh, learned counsel for the first informant and learned A.G.A. for the State and perused the material on record.

The present bail application has been filed on behalf of applicant Ravi Yadav under Section 439 of the Code of Criminal Procedure, with a prayer to release him on bail in Case Crime No. 8 of 2021 for offence punishable under Sections 302, 307, 120B Indian Penal Code registered at Police Station Airwa Katra, District Auraiyya, during the pendency of the trial after rejecting the bail application of the applicant by the Sessions Judge, Auraiyya, vide order dated 11.10.2021.

Brief facts of the case are that the First Information Report dated 14.01.2021 has been lodged by Rajendra Singh father of the deceased Smt. Mohini alias Priyanka against six named persons stating that the marriage of his daughter was solemnized on 28.02.2017 with the accused Saurabh. After marriage, named co-accused persons demanded Rs.5 lacs and a Swift Dezire Car as additional dowry. Due to reason all the co-accused named persons used to be beaten, tortured and harassed, which was told by the deceased to the first informant repeatedly. The co-accused Saurabh is husband of the deceased and other five co-accused persons are family members of the co-accused Saurabh. The first informant contacted many times but the accused persons did not meant their ways. Two months ago his daughter was beaten and thrown out from the matrimonial house and asked to bring the money and vehicle. On 13.01.2021 at about 7.30 p.m., co-accused Saurabh, Sunil and Ashwani came and fired upon Mohini alias Priyanka due to which she died on the spot. Smt. Sharda Devi the wife of first informant came on hearing the fire shots after which she also fired upon by the accused persons who then ran away from the house of Virendra, Praveen and other persons of the village saw then running away and tried to apprehend then but they ran away in their car. Injured Sharda Devi was taken to the hospital, where she is being treated. The dead body of the daughter of the first informant lying in the house.

After lodging the first information report, inquest of the body of the deceased was conducted on 14.1.2021 at 9.45 A.M. Postmortem of the deceased was conducted on 14.1.2021 at 3.30 p.m. As per postmortem report, one fire arm injury wound of entry size 01x01cm round in shape present on Lt. parietal region just above 09cm from upper part of Lt. ear Bullet found in emebbled in bone rt. lower occipital region. After recording the statement of the injured witness Sharda Devi, first informant Rajendra Singh and other eye witnesses, under section 161 Cr.P.C. The Investigating Officer filed charge sheet on 11.04.2021 and 7.9.2021 respectively. The applicant was arrested on 13.06.2021.

Learned counsel for the applicant also submitted that the applicant has no other previous criminal history. It is lastly submitted that if the applicant is released on bail, he shall not misuse the liberty of bail.

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

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

(a) the applicant is not named in the FIR.

- (b) the fire-arm injury was found on the person of deceased.
- (c) role of fire shot has been assigned to the co-accused Saurabh, Sunil and Ashwani.
- (d) No Specific role has been attributed to the applicant by the injured as well as eye witness of the incident.
- (e) the applicant was arrested as shown in the recovery memo with a country made pistol.

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, 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, Ravi Yadav be released on bail in the aforesaid case crime number on his 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 him 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 he 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 his 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."

and "Heard learned counsel for applicant and learned A.G.A. and perused records.

The present bail application has been filed by the applicant Usha Devi in Case Crime No.08 of 2021 under Sections 498A, 304B, 323, 506 IPC and Section 3/4 D.P. Act, Police Station Airwakatra District Auraiya.

Prosecution case in brief is that the marriage of the informant namely Mohini alias Priyanka was solemnized with Saurabh on 28.2.2017 and after marriage the husband and his family members started demanding extra dowry of Rs.5 lacs and one Swift Dezire Car and on account of non fulfillment of the same they started torturing the victim and thereafter the victim returned to her parental house. On 13.1.2021 at 7.30 p.m. Saurabh, Sunil and Ashwani came in the parental house of Mohini and fired on Mohini, as a result of which she died on the spot and thereafter accused persons ran away from spot which was seen by villagers Virendra and Praveen.

Submission of learned counsel for applicant is that general allegation of demand of dowry has been levelled against all the accused persons including the applicant. No specific role has been assigned to

the applicant. The applicant is the Jethani of the deceased and she has no concern with her. She is living separately along with her family. The role of firing on the deceased has been assigned to co-accused Saurabh, Sunil and Ashwani. As per post mortem report only gunshot injury was found on the body of the deceased and for the said injury no specific role has been attributed to the applicant. The applicant is having no criminal history and she is in jail since 18.5.2021.

Learned A.G.A. has, however, opposed the prayer for grant of bail but he has not disputed the above contention made by the learned counsel for accused-applicant.

Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for parties and without expressing any opinion on the merit of the case, I find it to be a fit case for granting bail.

Let the applicant Usha Devi be released on bail in the aforesaid case crime number on her furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned subject to following additional conditions, which are being imposed in the interest of justice:-

- (1) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.
- (2) 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 Cr.P.C. If in the opinion of the trial court 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 against him in accordance with law.
- (3) The applicant will not tamper with the prosecution witnesses.
- (4) The applicant will not indulge in any illegal activities during the period of bail.
- (5) In case of breach of any of the above conditions, the trial court would be at liberty to cancel the bail of the applicant."

9. Looking to the facts and circumstances of this case, the applicant is a lady, the said co-accused persons have been granted bail and particularly the case of the applicant is at par with that of co-accused Munni Devi and Usha Devi, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

10. Let the applicant Suman, 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 will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

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

(iv) 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 her 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 her, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court 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 against her in accordance with law and the trial court may proceed against her under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

11. 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.

12. The bail application is allowed.

Order Date :- 9.10.2023 M. ARIF (Samit Gopal, J.)