

A.F.R.

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. -
20991 of 2018

Applicant :- Vijay Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Adeel Ahmad Khan, Janardan
Shukla, Neeraj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Pachori, J.

Heard Sri Neeraj Singh learned counsel for applicant and Sri Sanjay Kumar Singh, learned A.G.A. and perused the material brought on record.

The present first bail application has been filed on behalf of applicant (husband) with a prayer to release him on bail in Case Crime No. 132 of 2017, under Sections 498-A, 304-B I.P.C. and 3/4 of Dowry Prohibition Act, Police Station- Gauri Bazar District- Deoria, during pendency of trial.

The submission advanced by learned counsel for applicant; he is innocent and has falsely been implicated in the present case during the course of investigation. It has been further contended that the applicant is husband and not named in the F.I.R. The charge sheet has been filed under Sections under Sections 498-A, 304-B I.P.C. and 3/4 of Dowry Prohibition Act only against the applicant. The marriage of the deceased was solemnized with applicant on 19.05.2015 and from the wedlock of the applicant and the deceased, they have a new born daughter of 10 days and she is living with applicant in applicant's house. The incident took place on 28.04.2017 at 04:00 A.M. and the dead body of the deceased was found inside the railway track where she went to

attend the natural call and the train just crushed her and the first information report has been lodged on 13.05.2017, i.e., after 16 days. The inquest report of the dead body of the deceased was got prepared on the spot at 11:00 A.M. on 28.04.2017 on the basis of information received at 07:25 A.M. Corpse of deceased Reena was identified by the father-in-law as well as villagers. The father-in-law of the applicant was also present at the time of preparation of the inquest report. Hence, he should have lodged F.I.R. of the alleged incident promptly on the said date, there appears no reason to lodge the F.I.R. after such delay of 16 days and that there is no explanation of such delay. Further, it is relevant that railway employee himself reported to the local police regarding commission of alleged incident. The post-mortem report reveals that the deceased have received as many as eight injuries which are as follows:-

(i) brain matter right side out of the skull, right temporal region;

(ii) upper hand deep lacerated wound bone seen;

(iii) left lower hand deep lacerated wound deep the bone;

(iv) brushed injury right chest,

(v) back of side of chest lacerated wound;

(vi) right lower leg am-bladed all punja & toes;

(vii) left side knee joint lacerated wound deep the bone;

(viii) brushed injury back side of the chest, ribs and chest wall of all ribs right and left side, cause and manner of death was hemorrhage and shock, due to ante-mortem crushed injury.

He further submits that the injuries received by the deceased which clearly depicted the actual position of the incident that the injuries caused to the deceased must have been caused by train accident. He next submitted that co-accused Ram Chandra (father-in-law) and Sripati @ Srimati (mother-in-law) have already been granted bail by this Court in Criminal Misc. Bail Application No. 10951 of 2018 vide order dated 23.3.2018, who are named in the F.I.R. The applicant is languishing in jail since 09.10.2017, having no criminal history nor there is any likelihood of fleeing from course of justice or tempering with evidence in case of released on bail.

Learned A.G.A. has vehemently opposed the prayer for bail by refuting the arguments advanced on behalf of learned counsel for the applicant regarding information of the incident as alleged to have been given by the father-in-law of the deceased.

It is settled position of law that bail is the rule and committal to jail and exception in the case of State of **Rajasthan Vs. Bal Chandra (1977) 4 SCC 308**, the Apex Court observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution and opined para 2 "The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do. not intend to be exhaustive but only illustrative." and considering the facts of the case and keeping in mind, the ratio of the Apex Court's judgment in the case of **Gudikanti Narasimhulu And Ors vs Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429**, larger mandate of Article 21 of the constitution

of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, 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.

Let the applicant **Vijay Gupta** involved in the aforesaid crime, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
4. In case the applicant has been enlarged on short term bail as per the order of committee constituted under the orders of Hon'ble Supreme Court his/her bail shall be effective after the period of short-term bail comes to an end.
5. The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

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

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.

Order Date :- 12.3.2021

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