

A.F.R.

Court No. - 14

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Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12245 of 2019

Applicant :- Bablu Second Bail Application

Opposite Party :- State of U.P.

Counsel for Applicant :- Neeta Singh Chandel

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Kunvar Srivastav,J.

1. The case is called out through video conferencing in virtual hearing.
2. Heard learned counsel for the applicant Ms. Neeta Singh Chandel, Advocate, learned A.G.A. for the State Sri Raveesh Chandra Mishra, Advocate through video conferencing and perused the record.
3. The present bail application is moved on behalf of the accused-applicant involved in Case Crime No. 308 of 2013, under Sections 498-A, 304-B, 201 I.P.C. and Section 3/4 D.P. Act, Police Station- Itaunja, District- Lucknow.
4. Briefly stating, it is argued by the defence that in the prosecution case there is some ambiguity and anomaly in between the version of the First Information Report as to the manner of causing death of the deceased by her in-laws. But this is not so, as the same is amply elucidated from the statement recorded in the proceeding under investigation. Initially the aggrieved father of the deceased "Pinky" (wife of the present accused-applicant, Bablu) reported on 28.12.2013 in Police Station- Itaunja, Lucknow that he came to know about her daughter Pinky was done to death cruelly in connection with demand of dowry which remained unfulfilled and her body was secretly burnt in collusion with Gram Pradhan, Bhagwati.
5. A criminal case was lodged on the aforesaid information bearing First Information Report No.308 of 2013 in Police Station- Itaunja, Lucknow under Sections 498-A, 304-B, 201 I.P.C. and Section 3/4 D.P. Act. The Investigating Officer found out that the victim namely "Pinky", daughter of complainant, Babulal was burnt and her dead body was buried at a secret place by the accused-applicant and his family members for vanishing of the evidences. On information to the above effect brought by the Senior Superintendent of Police before the District Magistrate Lucknow on 01.01.2014, the office of the District Magistrate Lucknow issued a letter dated 04.01.2014 for permission

to excavate the place of burrial and exhume the dead body of the deceased, Pinky. The dead body was exhumed from the place of burial and inquest proceeding was done before the witnesses. The dead body was observed with peeled off skin at several places, teeth and nails were loosened from their sockets in easily detachable condition. Soil and mud was present on clothes and person of the dead body at several places.

Antemortem Injuries reported in the course of post-mortem are as under:-

*(i) **Contusion 9.00 cm x 6.00 cm present on right side head just above and behind right ear**, on opening ecchymosis present underneath the injuries menining congested, brain liquefied and mixed with clotted blood.*

*(ii) Post mortem injuries soft to **deep burn present on all over body except top of head**, skin is blackened and peeled of at places, burn area yellowish in colour when skin is peeled of. No redline of demarcation seen at junction of burned and unburned area. No Int.part on the body.*

6. The accused-applicant and other in-laws were not present at the time of inquest whereas father of the victims "Pinky" is mentioned as witnesses, the body was sent for the post-mortem as the witnesses could not ascertained the actual cause of death, dead body was in rotten condition. The post-mortem was done on 7.1.2014, doctors opined **death about one month ago due to coma as a result of anti-mortem head injuries**, however, viscera was preserved and sent to Forensic Science Laboratory for chemical examination.

7. In the aforesaid facts and substances on record, reading over the first information report and the statement of the complainant recorded by Investigating Officer under Section 161 Cr.P.C., it comes out that the deceased, Pinky was married about three years ago from the date of incident with the present accused-applicant, resident of village Soraon situated under Police Station- Itaunja, District Lucknow. Just after the marriage was solemnized, the in-laws of the deceased, Pinky began to insist for additional dowry and to transfer a considerable amount of money from the deposits of father. Since the demand could not be fulfilled by reason of poverty and indigency of father, they severally used to beat his daughter, Pinky. On information as to the excessive cruelty committed with his daughter, complainant Babulal went to the in-laws' house of daughter in village Soraon and prayed them not to commit such cruelty as it is beyond his capacity to pay

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 additional dowry by reason of his poverty. When they convinced about the poverty and incapacity of the father to give additional dowry, they all collusively killed her and secretly cremate her body.

8. Learned counsel submitted that the First Information Report which is foundation of the entire prosecution case is false and fabricated due to which no independent witnesses could be obtained by it during the proceeding of recovery and preparation of recovery memo. Apart of this technical challenge against the prosecution case entire affidavit filed in support of the bail application has no explanation as to the circumstance of death why and under which the death of the deceased Pinky was occurred. Secondly, why without informing the father, body of the deceased Pinky was secretly burnt. Thirdly, no explanation as to the ante-mortem injuries found on the body of deceased Pinky which was recovered by exhuming the same from place of burial. The post-mortem report has also reported about the rotten condition of dead body exhumed from the place of burial as the clothes on the body and body itself was wrapped with mud and soil which corroborates the fact of concealing the dead body by burial after death caused by head injury and burning.

9. In the case of ***Prahlad Singh Bhati Vs. NCT, Delhi and another - (2001 4 SCC 280)***, Hon'ble the Supreme Court has held some parameters for grant of bail, which are being quoted hereunder:-

"8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, 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 interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

10. The facts that the accused-applicant is found to have committed willingly the death of his wife after beating her brutally in connection

with the demand of dowry soon before her death is prima facie established from the ante mortem injuries found on the person of the deceased reported in post mortem examination report of the dead body. The dead body was burnt and buried at a secret place is also prima facie established, moreover, no information of death was given to the father and other family members of the deceased which reflects the criminal *mens rea* of the accused. He further contended that the body was recovered only on exhuming the dead body from the place of burial with the permission of District Magistrate on information of witnesses during the investigation. These all established that the death of deceased, Pinky was a result of planned and premeditated murder.

11. In the aforesaid circumstances, the brutality with wife a 22 years old lady and mother of an one year's infant child in causing her death, beating her cruelly by the present accused applicant "her husband" is not only grave in nature but heinous also, and is evident of callous greed of a heartless husband and self centered irresponsible father of the infant child. All the witnesses have not been examined as offered by the prosecution in charge sheet and still a material number of witnesses remain to be examined. The cruel nature and instinct of the applicant in case of his release on bail certainly would adversely affect the witnesses.

12. At this stage, the prosecution has succeeded successfully to prima facie establish its case against the present accused-applicant who is the main accused of the case.

13. In the aforesaid circumstances, the application for release of bail does not deserves to be allowed, accordingly, the same is hereby *rejected*.

Order Date :- 27.1.2022

Gaurav/-