

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3215 of 2023

Applicant :- Durvesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ritesh Singh, Suresh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamsbery, J.

Heard Sri Suresh Singh, learned counsel for applicant and Sri Markandey Singh, Brief Holder for State.

Applicant has approached this Court by way of filing the present Criminal Misc. Bail Application under Section 439 Cr.P.C. in Case Crime No.0136 of 2021 under Sections 498A, 506, 504, 302, 508, 120B and 34 I.P.C., Police Station- Puwayan, District - Shahjahanpur, after rejection of his Bail Application vide order dated 07.07.2021 passed by Sessions Judge, Shahjahanpur, .

This is a case where the facts are not only shocking but show the mindset of male persons that when a woman has not conceived for many years, the only fault is of the women and not of men and for that women are subject to occultist (तांत्रिक) rituals. It is a curse for society that such rituals are still prevailing in 21st Century.

In the present case, applicant, who is Devar of deceased along with her family members, including husband of deceased hatched a conspiracy and in furtherance of their common intention, subjected the deceased with gruesome rituals as advised by a tantrik (co-accused) that she was repeatedly burnt by red hot Pinch(चिमटा) and due to that she died. According to post-mortem report, as many as 17 ante-mortem injuries

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including many burn injuries were found and immediate cause of death was coma due to ante-mortem head injury, a lacerated wound.

Learned counsel for applicant had tried to make out a case for bail by placing the statement of witnesses recorded during investigation, however, miserably failed as there are independent witness account as well as eye-witness account which completely corroborates the prosecution case.

Learned A.G.A. for State has also referred the statement of witnesses who have supported the prosecution case.

LAW ON BAIL - A SUMMARY

(A) The basic rule may perhaps be tersely put as bail, not jail.

(B) Power to grant bail under Section 439 Cr.P.C., is of wide amplitude but not an unfettered discretion, which calls for exercise in a judicious manner and not as a matter of course or in whimsical manner.

(C) While passing an order on an application for grant of bail, there is no need to record elaborate details to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal. However, a Court cannot completely divorce its decision from material aspects of the case such as allegations made against accused; nature and gravity of accusation; having common object or intention; severity of punishment if allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of witnesses being influenced by accused; tampering of evidence; character, behaviour, means, position and standing of accused; likelihood of offence being repeated; the frivolity in the case of prosecution; criminal antecedents of accused and a prima facie satisfaction of Court in support of charge against accused. The Court may also take note of participation or part of an unlawful assembly as well as that circumstantial evidence not being a ground to grant bail, if the evidence/ material collected establishes prima facie a complete chain of events. Parity may not be an only ground but remains a relevant factor for consideration of application for bail.

(D) Over crowding of jail and gross delay in disposal of cases when undertrials are forced to remain in jail (not due to their fault) may give rise to possible situations that may justify invocation of Article 21 of Constitution, may also be considered along with other factors.

(See, **State Of Rajasthan, Jaipur vs. Balchand @ Baliay (AIR 1977 SC 2447 : 1978 SCR (1) 535; Gurcharan Singh vs. State (Delhi Administration), (1978) 1 SCC 118); State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21; Prasanta Kumar Sarkar vs. Ashis**

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Chatterjee and Anr (2010)14 SCC 496; Mahipal vs. Rajesh Kumar, (2020) 2 SCC 118; Ishwarji Mali vs. State of Gujarat and another, 2022 SCC OnLine SC 55; Manno Lal Jaiswal vs. The State of U.P. and others, 2022 SCC OnLine SC 89; Ashim vs. National Investigation Agency (2022) 1 SCC 695; Ms. Y vs. State of Rajasthan and Anr :2022 SCC OnLine SC 458; Manoj Kumar Khokhar vs. State of Rajasthan and Anr. (2022)3 SCC 501; and, Deepak Yadav vs. State of U.P. and Anr. (2022)8 SCC 559)

Considering the above submissions and taking note of manner in which victim was tortured by occultist rituals as well as nature and number of injuries (17 in numbers) caused to victim, who died as well. Court also takes note of nature of evidence collected during investigation which completely corroborates the prosecution case.

The mindset of applicant and co-accused who still believe in occultism to be a cure of female infertility even before ascertaining that it might be a case of male infertility, is of persons living in stone age and not in 21st Century, where science as developed to such extent that even infertility (of male or of female) may be medically cured, therefore, there is absolutely no case of bail at this stage. Accordingly bail application is **rejected**.

At this stage, learned counsel for applicant submits that a direction be passed to Trial Court to conclude the trial expeditiously.

Considering the above submissions, Trial Court is directed to conclude the trial expeditiously, preferably within a period of one year, if there is no legal impediment.

Order Date :- 12.4.2023

P. Pandey