

(2006) 08 AHC CK 0194

In the Allahabad High Court

Case No : Criminal Misc. Bail Application No. 16569 of 2006

Santosh Sharma (In Jail)

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 323, 498A

Citation : (2006) 08 AHC CK 0194

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Baij Nath Singh and Mahesh Chandra Tripathi, for the Appellant;
Sunil Kumar Pathak and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—This application has been filed by the applicant Santosh Sharma with a prayer that he may be released on bail in case crime No. 104 of 2006, under Sections 323 498A 304B I.P.C. and Sections 3/4 Dowry Prohibition Act, P.S. Sikandara District Agra.

2. The prosecution story, in brief, is that the F.I.R. has been lodged by Shyam Sundar Baruva at P.S. Sikandara, Agra on 04.3.2006 at 2.30 p.m. in respect of the incident which had occurred on 4.3.2006 at unknown time at the house of the applicant. The F.I.R. has been lodged against the applicant and his parents alleging therein that the marriage of the deceased was solemnized with the applicant in the month of December 2001. The deceased was regularly subjected to cruelty by the applicant and other co-accused persons after her marriage. The first informant tried to pacify the matter, but could not get any success. The applicant has suffered a loss in his business, to fulfill the same loss the applicant was demanding a sum of Rs. 2 lac from the first informant, though the first informant was unable to pay the such huge amount even then he has given a sum Of Rs. 1 lac to the applicant. The applicant and his family members were not

satisfied with that amount and they were subjecting the deceased to cruelty and extending the threats to kill her also. In the morning of 4.3.2006 the deceased has been murdered by the applicant and his parents by way of throttling and tried to give a colour of suicide. On the basis of above F.I.R. the inquest report was prepared on 4.3.2006 from 3.05 p.m. to 4.05 p.m. Thereafter, the post mortem examination of the dead body was conducted, in which it was found that the deceased has received 4 ante mortem injuries and cause of death was asphyxia as a result of strangulation.

3. Heard Sri B.N. Singh and Sri Mahesh Chandra Tripathi learned Counsel for the applicant, learned A.G.A. for Sri Sunil Kumar Pathak learned Counsel for the complainant.

It is contended by the learned Counsel for the applicant that:

(i) Even according to the prosecution version there was no demand of dowry, because the allegation against the applicant is that the he has suffered a loss in his business and to fulfill the same loss he was demanding a sum of Rs. 2 lac from the first informant has in furtherance of that demand the first informant has given Rs. 1 lac to the applicant, but the applicant and his parents were not satisfied and the deceased was subjected to cruelty to fulfill that demand. In the F.I.R. itself it has not been mentioned that there was any demand of dowry at the time of marriage.

(ii) The information was given by the applicant to the first informant. On that information he came at the place of occurrence and due to some ulterior motive he lodged the F.I.R. against the applicant and his parents making false allegation of demand of dowry.

(iii) There was no demand of dowry and the deceased was never subjected to cruelty to fulfill the same. An information was given to the first informant by the applicant on that information he came Lal Babu, the uncle of the deceased, is the witness of the inquest report also, but in the inquest report nothing has been mentioned in respect of demand of dowry and cruelty. The inquest report was prepared by the learned Magistrate.

(iv) According to the post mortem examination report the cause of death has been shown as strangulation, but symptoms of the dead body does not show that the cause of death was strangulation, but it was case of suicide by way of hanging. The I.O. has recorded the statement of Sri J.P. Singh. Tahsildar on 24.3.2006 and the statement of Dr. S. Bhatnagar and Dr. Dharmendra Singh (Autopsy Surgeon), but they simply stated that the cause of death was asphyxia. They have not stated that asphyxia was due to strangulation. Even the I.O. has not put any such question from the above-mentioned Doctors to ascertain that the cause of death was asphyxia.

(v) During the course of investigation some persons namely Smt. Krishna, Raju Singh, Jagdish Chandra Shrama, Harendra Singh, Rajendra Prasad Gupta,

Ramanand Yadav and Smt Kalawati have filed their affidavits before the S.S.P., Agra. The same have been sent by him to the I.O. concerned which have been made the part of investigation by the I.O. According to the aforesaid affidavits the relation of the applicant and the deceased were cordial, but it is surprising that the I.O. did not record the statement of the above-mentioned persons and without recording their statements the charge sheet has been submitted.

(vi) The deceased committed suicide after locking the main door of the house from inside. The same was opened by jumping the wall of the house. Its information was given by Smt Krishna to the police station, but the same was not reduced in writing, but it was duly received by the police station concerned. The deceased was issueless and due to this fact she was mentally disturbed and several times she became ill, but she has taken the medicines and ultimately she committed suicide.

(vii) The applicant is innocent. He has not committed the alleged offence. The allegation in respect of demand of Rs. 2 lac and the allegation of subjecting the deceased to cruelty to the deceased are false and frivolous, because there was no demand of dowry and the deceased was never subjected to cruelty by the applicant and his family members and prior to death of the deceased no such complaint has been made by the first informant and others. At the time of committing suicide the deceased was alone in the house. Neither the applicant nor his parents were present there. According to the inquest report also the Tahsildar Magistrate was also of the view that the deceased has committed suicide.

(viii) Co-accused i.e. father-in-law and mother-in-law of the deceased have already been released on bail, therefore, the applicant may also be released on bail.

4. In reply of the above contention the learned A.G.A. and the learned Counsel for the complainant submit that there is specific allegation against the applicant that he was demanding a sum of Rs. 2 lac from the first informant and in furtherance of that demand a sum of Rs. 1 lac was given by the first informant, even then he was not satisfied and The deceased was always subjected to cruelty after her marriage because the applicant and his parents were not satisfied with the dowry given at the time of marriage. Admittedly, the marriage of the deceased was solemnized in the month of December 2001. She has been murdered within 5 years of her marriage. The cause of death is strangulation and the deceased has received ante mortem injuries, but the applicant, has tried to give a colour of this case as a suicide in order to save his skin from the criminal liability. The inquest report etc. was prepared on the basis of the information given by the first informant and the death of the deceased is unnatural. The affidavits of some persons given to the I.O. does not discredit the allegations made against the applicant. The persons who have filed their affidavits may be produced before the trial court in defence. The applicant is the husband of the deceased. The deceased has been murdered by strangulation and there is no

symptoms of the dead body to show that it was a case of hanging and the demand of Rs. 2 lac was made by the applicant and to fulfill the same the deceased was subjected to cruelty by him, therefore, the applicant is not entitled for bail.

5. Considering the facts and circumstances of the case and submissions made by the learned Counsel for the applicant, the learned A.G.A. and learned Counsel for the complainant and considering the fact that in the present case admittedly the marriage has been solemnized in the month of December 2001, the deceased has died within 7. years of her marriage, the cause of death is strangulation, the deceased had received 4 ante mortem injuries, there is specific allegation against the applicant that he was demanding a sum of Rs. 2 lac from the first informant, to fulfill the same the deceased was subjected to cruelty, according to the medical examination report the contention of the learned Counsel for the applicant that it was a case of hanging is having no substance, it is not necessary for the I.O. to record the statements of those persons who have given affidavits in favour of the accused persons on the basis of broad features of this case the cause of death is unnatural and the deceased has received ante mortem injuries, the applicant is husband of the deceased and without expressing any opinion on the merits of the case, the applicant is not entitled for bail, therefore, the prayer for bail is refused.

6. Accordingly, the bail application is rejected.