
(2012) 10 AHC CK 0179

Allahabad High Court

Case No: Criminal Miscellaneous Bail Application No. 11262 of 2012

Munendra Kumar Rai

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Oct. 12, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3)
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 201, 304B, 328, 498A

Citation: (2013) 1 ACR 722

Hon'ble Judges: S.C. Agarwal, J

Bench: Single Bench

Advocate: Manoj Kumar Singh, Santosh Kumar Rai and V.P. Srivastava, for the Appellant;
I.K. Chaturvedi and A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

S.C. Agarwal, J.

This bail application has been moved on behalf of the applicant Munendra Kumar Rai involved in Case Crime No. 2258 of 2008, under Sections 498A. 304B. 328 and 201, I.P.C. and 3/ 4 of Dowry Prohibition Act, P.S. Kotwali district Ghazipur. Heard Sri V.P. Srivastava, senior advocate assisted by Sri Manoj Kumar Singh and Sri Santosh Kumar Rai, learned counsel for the applicant, learned A.G.A. for the State and Sri I.K. Chaturvedi, learned counsel for the complainant and perused the material available on record.

2. The facts are that Smt. Pratibha Pradhan was married to Munendra Kumar on 6.5.2007. She was employed with Indian Railways and on the fateful date she was posted at Railway Station, Ghazipur. As per allegations, she consumed poison on 10.7.2007 at her residence and she was rushed to the District Hospital, Ghazipur for

her treatment wherefrom she was referred to Singh Medical and Research Center, Varanasi and therefrom to the Institute of Medical Sciences, Banaras Hindu University. Varanasi but she could not survive and expired on 11.7.2007. On 17.6.2008, an application u/s 156 (3), Cr. P.C. was moved before the Chief Judicial Magistrate, Ghazipur and under his orders an F.I.R. was lodged on 25.8.2008. The matter was investigated by a police officer of the rank of Dy. S.P. who in due course submitted a charge-sheet against the applicant and others. The applicant is in jail since 19.10.2011.

3. Smt. Nagina Devi, the mother of the deceased, moved an application for Succession Certificate on 20.8.2007 before the Court of Civil Judge (S.D.), Ghazipur claiming herself to be the sole heir of the deceased Smt. Pratibha Pradhan and prayed the court that a succession certificate may be issued in her favour regarding the movable and immovable properties of the deceased. In that application she arrayed as opposite parties Keshav Pradhan and Janardan Pradhan, who are the real paternal uncles of the deceased. Keshav Pradhan and Janardan Pradhan filed "No Objection" in favour of Smt. Nagina Devi in the succession case. When the applicant, who was working in Asansol came to know of the succession case, he appeared before the court of Civil Judge (S.D.), Ghazipur and filed an objection with an application under Order I, Rule 10 of CPC on 17.11.2007. Thereafter, the abovementioned application u/s 156 (3), Cr. P.C. was moved on 17.6.2008 before the court of learned Chief Judicial Magistrate, Ghazipur by Janardan Prasad, real paternal uncle of the deceased. The amount of fund of the deceased is stated to be Rs. 2,66,000. It has also been the case of the prosecution that on 9.7.2007 the deceased had sent a letter to her uncle in which she has mentioned that her husband and his relatives including the applicants were harassing her for dowry and there is a possibility that they might even kill her. It has also been mentioned in this letter that the accused persons of this case are pressurizing her to ask her mother to give her landed property to the husband of the deceased.

4. It has been submitted by learned counsel for the applicant that as per the allegations, the alleged date of consumption/administration of poison to the deceased is 10.7.2007; that it was the mother of the deceased who rushed her to the District Hospital. Ghazipur and since it was an apparent case of suicide/murder, the Medical Officer Dr. Vibhuti Kumar Srivastava sent a memo to the S.H.O. Kotwali, Ghazipur on 10.7.2007 at 9.45 p.m. It has further been submitted that reference of this memo is there in CD. No. VII dated 27.9.2008 which indicates that the Medical Officer concerned had informed the police on 10.7.2007 and in this memo it has been specifically mentioned that the deceased was brought to the hospital by her mother. Learned counsel for the appellants has further stated that the statements of Sanjay Singh, a Railway Officer at Ghazipur and Dr. Vibhuti Kumar Srivastava are available in the case diary. Both of them have said that the deceased was rushed to the District Hospital. Ghazipur by Sanjay Singh by his car and as per the memo it was the mother of the deceased who got her admitted there. This falsifies the contention

of the State that no one from the mayka of the deceased was with her when she consumed poison. It has further been submitted that the letter dated 9.7.2009 was kept in his pocket by the complainant and it has seen the light of the day when the objection in the succession case was filed by the husband of the deceased before the Civil Judge (S.D.), Ghazipur and thereafter an application u/s 156 (3), Cr. P.C. was moved. In this background it has been submitted by learned counsel for the applicant that it appears that It is a case of food poisoning and after the death of Pratibha Pradhan, her mother in a collusive manner filed a succession case to obtain certificate in her favour regarding the properties of the deceased and when it was objected to by the husband of the deceased, the application u/s 156.(3), Cr. P.C. with false allegations was moved. Mr. V.P. Srivastava, learned senior counsel, pointed out that the date of objection by the husband of the deceased before the Civil Judge (S.D.), Ghazipur is 17.11.2007 whereas the date of application u/s 156 (3), Cr. P.C. is 1.6.2008 which is a subsequent date. It has also been submitted that the letter, said to have been written by the deceased, was never sent to a Hand Writing Expert to ensure whether it was a letter really written by the deceased or not. He has said that the Investigating Officer has not undertaken this exercise. Mr. Srivastava has further said that since the death was not unnatural, no inquest report was prepared and no post-mortem was conducted.

5. Learned counsel for the applicant submits that the prosecution has not cared to verify the hand writing of the deceased on the letter allegedly written by her and produced by the complainant but the applicant has got the same examined by Truth Labs, New Delhi, who found the same not to be in the hand writing of the deceased.

6. The bail application has been vehemently opposed by learned counsel for the complainant Sri I.K. Chaturvedi and learned A.G.A. Learned counsel for the complainant has stated that the letter dated 9.7.2007 is in the hand-writing of the deceased. He has further said that since before her death, on many occasions the deceased used to tell to her mayka people regarding the bad and inhuman behaviour of her husband and his relatives by demanding dowry. He has further said that it is to be seen at the stage of trial whether the letter dated 9.7.2007 is a genuine or a forged document. It was further submitted that the deceased was not admitted at the hospital by her mother and mother's name was deliberately introduced in hospital papers.

F.I.R. in this case is highly delayed. No reason whatsoever has been put forward before this Court as to under what circumstances, the application u/s 156 (3), Cr. P.C. was moved before the learned C.J.M., Ghazipur after 11 months. It has also not been explained as to under what circumstances Smt. Nagina Devi, mother of the deceased moved a succession case to have a certificate in her favour regarding the properties of the deceased arraying only the real paternal uncles of the deceased knowing it fully well that the husband of the deceased was alive. The objection of the husband of the deceased in the succession case was moved on 17.11.2007 and

the civil court concerned took cognizance of his presence and thereafter the application u/s 156 (3). Cr. P.C. was moved on 17.6.2008. In the instant case no inquest report has been prepared and no post-mortem was conducted despite the fact that the death has occurred in the Institute of Medical Sciences, B.H.U., Varanasi. It indicates that mayka people of the deceased did not inform the hospital authorities that it was a case of suspected poisoning/murder. The amount of fund is said to be Rs. 2,66,000 which is a huge amount. Both mother of the deceased and husband of the deceased are eager to have this money. It is also not clear as to under what circumstances the Investigating Officer did not send the letter dated 9.7.2007. said to have been written by the deceased, to the Hand Writing Expert despite the fact that the hand-writing of the year 2005 of the deceased was available with the railway authorities at Ghazipur railway station.

7. Co-accused Ram Bahadur-father-in-law and Narendra Kumar Jeth of the deceased were granted bail vide order dated 19.4.2012 passed by Hon"ble Ashok Srivastava, J. in Criminal Misc. Bail Application No. 29607 of 2011. The complainant preferred SLP before the Apex Court, which was dismissed on 27.7.2012.

8. In the above circumstances, I am of the view that the applicant is entitled to be released on bail. Let the applicant Munendra Kumar Rai involved in Case Crime No. 2258 of 2008. under Sections 498A, 304B, 328 and 201, I.P.C. and 3/ 4 of Dowry Prohibition Act, P.S. Kotwali, district Ghazipur, 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:

(a) The applicant shall attend the court according to the conditions of the bond executed by him;

(b) 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.