

**Court No. - 78**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 40128 of 2022

**Applicant :-** Mohd Danish

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Jai Singh Yadav

**Counsel for Opposite Party :-** G.A.

**Hon'ble Krishan Pahal,J.**

Heard Sri Jai Singh Yadav, learned counsel for the applicant and Sri Ram Prakash Patel, learned AGA for the State and also perused the material placed on record.

By means of the present application, the applicant seeks bail in Case Crime No. 460 of 2021, under Sections 498-A, 304B & 323 IPC and Sections 3/4 of Dowry Prohibition Act, Police Station- Bhojpur, District- Moradabad, during the pendency of trial.

As per prosecution story, the sister of the first informant was married to the applicant according to Muslim Rites in May, 2017. She was being subjected to cruelty by the applicant and other family members for a demand of dowry of Rs.5 lakh and, as such, she was put to death by them on 28.11.2021 at about 12 Noon.

Learned counsel for the applicant has stated that there is no injury sustained by the deceased. To buttress his argument, learned counsel has placed much reliance upon the Inquest report and the autopsy report of the deceased person wherein it has categorically been stated that no visible injury was observed by the inquest witnesses and the doctor either. Learned counsel has further stated that the trial is going on. The first informant and the transcriber of the FIR have been examined in Court and they have resiled from the statement recorded u/s 161 Cr.P.C. and have been cross-examined by the public prosecutor. They have even denied the allegations levelled in the FIR. Learned counsel has also stated that the victim had expired in the hospital and the same has been mentioned in the Inquest report.

Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length.

It is further submitted by the learned counsel for the applicant that the applicant has been falsely implicated in the present case. The applicant is languishing in jail since 6.12.2021 having no criminal history to his credit, deserves to be released on bail. In case, the applicant is released on bail, he will not misuse the liberty of bail and shall cooperate with the trial.

Per contra, Sri Ram Prakash Patel, learned A.G.A. has vehemently opposed the bail prayer of the applicant but could not dispute the fact that the applicant has no criminal history.

Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of ***Dataram Singh Vs. State of U.P. and another*** reported in ***(2018) 3 SCC 22*** as well as recent judgement dated 11.7.2022 of the Apex Court in ***Satendra Kumar Antil Vs. C.B.I.*** passed in ***S.L.P. (CRL.) No.5191 of 2021*** and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant- Mohd Danish, who is involved in the aforementioned case crime number 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the Trial Court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A IPC.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C., may be issued and if applicant fails to appear before the Court on the date fixed in such proclamation, then, the Trial Court shall initiate proceedings against him, in accordance with law, under Section 174-A IPC.

(iv) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2)

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framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

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

It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

**Order Date :- 16.9.2022**  
Siddhant