

Gudiya Vs. State of U P

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Court : Allahabad

Decided On : Aug-23-2012

Judge : Naheed Ara Moonis

Appeal No. : Criminal Misc. Bail Application No. 5207 of 2011

Appellant : Gudiya

Respondent : State of U P

Judgement :

1. HEARD learned counsel for the applicant, the learned AGA appearing on behalf of State and perused the record. The present bail application has been moved by the applicant, Gudiya in case crime no.1349 of 2010, under Sections 304B, 498A IPC read with Section 3/4 Dowry Prohibition Act, P.S. Kolhuai, District Maharjganj, with a prayer that she may be admitted to bail during the pendency of trial.

2. THE prosecution case in a nutshell is that, on 24.9.2010 at about 11:00 a.m., a first information report was lodged by the mother of the deceased, that the marriage of her daughter, Mamta had solemnized with Ram Milan five years prior to the incident. At the time of marriage sufficient dowry was given, but her in-laws were not satisfied and they were constantly demanding additional dowry, and on account of non fulfillment thereof, she had been tortured mentally and physically both and had been threatened for dire consequences. On 1.9.2010, her daughter was done to death by pouring kerosene oil and setting her on fire by the applicant

and the husband of the deceased. The husband and the inmates of the house had taken her to the hospital for treatment. Her statement was also recorded on the day of the incident at about 1:25 p.m. During treatment she succumbed to burn injuries on 20.9.2010. The postmortem was conducted, wherein the superficial burn injuries were found, and according to the doctor's opinion cause of death was shock due to massive burn. It is contended by the learned counsel for the applicant, that the applicant is the Jethani of the deceased, and vague allegations have been made in the first information report, that after the marriage which was taken place five years prior to the incident, the in-laws were demanding dowry, and when the demand was not fulfilled she was tortured and harassed by the applicant and her husband, and was set on fire. The dying declaration of the deceased was also recorded, in which there is no whisper with regard to the demand of any dowry, rather, there is only allegation, that the applicant has illicit relations with the husband of the deceased, and her husband used to act at the behest of the applicant, therefore, the allegation with regard to the demand of dowry stands falsified.

It is further contended that, the first information report has been lodged after great delay, even though her dying declaration was recorded on 1.9.2010, who disclosed the complicity of the applicant and Ram Milan, therefore, the prosecution has been launched after due deliberation and consultation. The applicant is having a newly born child in her lap and has minor children. The applicant has been falsely implicated in the case. The charges have been framed, but none of the prosecution witness has been examined till date. The applicant is languishing in jail since 3.10.2010. In case she is released on bail, she will not misuse the liberty of bail. Per contra, the learned AGA has contended that, there is specific allegations of demand of dowry in the first information report. The death of the victim has occurred within five years of marriage. The applicant has been assigned the role of setting on fire the victim, while the husband, Ram Milan had poured kerosene oil. The dying declaration of the deceased cannot be discarded at this stage. Mere long incarceration in jail is no ground to get indulgence of bail. There is active participation of the applicant in the commission of murder of the deceased, therefore, the applicant does not deserve to be enlarged on bail. In case, she is enlarged on bail, she will try to intimidate the witnesses.

3. CONSIDERING the above facts and circumstances, without expressing any opinion about the merits of the case, let the applicant, namely Gudiya involved in case crime no.1349 of 2010, under Sections 304B, 498A IPC read with Section 3/4 Dowry Prohibition Act, P.S. Kolhuai, District Maharjganj, be released on bail, on her executing a personal bond and furnishing two heavy sureties each in the like amount to the satisfaction of the court concerned, with the following conditions:-

- (i)The applicant will not tamper with the evidence during the trial.
- (ii)The applicant will not pressurise/ intimidate the prosecution witness.
- (iii)The applicant will appear before the trial court on the date fixed.

In defiance of the above conditions, the prosecution would be at liberty to move application for cancellation of bail.

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