

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 578 of 2023

Applicant :- Manish Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Tarun Jha, Laxmi Narayan Rathour, Vishnu Kant Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Laxmi Naraya Rathour, learned counsel for the applicant and Sri Ghanshyam Mishra, learned brief holder for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 0011 of 2022, under Sections 498-A, 304-B IPC & 3/4 D.P. Act, Police Station- Madhogadh, District- Jalaun, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and his family members and according to the FIR, marriage of the applicant was performed with the sister of the informant on 29.03.2021 and after marriage, applicant and his family members tortured her for demand of Rs. 1 lac and on 20.01.2022, applicant and his family members committed her murder for want of dowry.
4. Learned counsel for the applicant submitted that applicant is the husband of the deceased and on the basis of false allegation of demand of dowry and torture, he has been made accused in the present matter. He further submitted that actually deceased was not happy with her marriage with the applicant as she was having some relationship with her neighbour and several times, applicant objected but she was not ready to leave her illicit relationship with her neighbour.
5. He further submitted that one day applicant also obtained nude photographs of the deceased, which were sent by her to her paramour and thereafter some hot conversation took place between both of them and thereafter deceased i.e. his wife hanged herself.
6. He further submitted that even during trial, informant i.e.

brother of the deceased and her father when appeared before the trial court as P.W. 1 and P.W. 2 respectively then they did not support the prosecution case and have been declared hostile. He further submitted that father of the deceased i.e. P.W. 2 in his cross examination accepted that when nude photographs of his daughter was sent on the mobile phone of the applicant and his family members then in shame, she committed suicide.

7. He further submitted that as informant and father of the deceased both have been declared hostile therefore, there is no evidence on record at this stage, which can show that, applicant ever harassed the deceased for demand of dowry and therefore, no presumption under the provisions of 113-B Indian Evidence Act could be drawn against the applicant at this stage.

8. He further submitted that even post-mortem report of the deceased suggests that she died due to hanging and applicant is in jail since 22.01.2022 i.e. for almost two years.

9. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is the husband of the deceased and his wife died with a year of her marriage under abnormal circumstances and there is also allegation of demand of dowry but could not dispute the fact that informant i.e. brother of the deceased and her father when appeared before the trial court then they did not support the prosecution case and both have been declared hostile.

10. He further could not dispute the fact that the defence taken by the applicant however, could not fully supported by the statements of the informant and father of the deceased (P.W-2) but he fairly conceded that even father of the deceased in his cross examination stated that the nude photographs of the deceased were sent by someone on the mobile phone of the applicant and his family members and thereafter she committed suicide.

11. I have heard learned counsel for the parties and perused the record of the case.

12. However, applicant is the husband of the deceased and his wife died within a year of her marriage under abnormal circumstances due to hanging in her matrimonial home and there is also allegation of demand of Rs. 1 lac. but applicant in the instant bail application has taken a specific plea that deceased was not happy with her marriage with the applicant and she was having some relationship with her neighbour and even after her marriage, she

was in touch with him and she used to send her indecent photographs to her neighbour and as per the applicant, indecent photographs of the deceased were also received by him and thereafter some hot conversation took place between husband and wife and thereafter his wife i.e. deceased hanged herself and in this regard, he also annexed the alleged indecent photograph of the victim along with the instant bail application.

13. Further, during trial, informant i.e. brother of the deceased and her father when appeared before the trial court as P.W. 1 and P.W. 2 respectively then they did not support the prosecution case and both have been declared hostile and father of the victim in his cross examination also stated that on the mobile phone of the applicant and his family members obscene photographs of the deceased were received and thereafter she hanged herself and, therefore, defence taken by the applicant cannot be ruled out at this stage.

14. Further, post-mortem report of the deceased also suggests that she died due to hanging and applicant is in jail in the present matter since January, 2022 i.e. for last almost two years.

15. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant, who is although, husband of the deceased, is entitled to be released on bail.

16. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

17. Let the applicant- **Manish Kumar** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

18. In case of breach of any of the above condition, the

prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

19. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 29.11.2023

KK Patel