

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5729 of 2021

Applicant :- Mohammad Yasiv

Opposite Party :- State of U.P.

Counsel for Applicant :- Prashant Verma, Akhilesh Singh, Shivam Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Akhilesh Singh, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 230 of 2017, S.T. No. 124 of 2017, under Sections 498A, 304B IPC and Section 3/4 D.P. Act, Police Station Bhogaon, District Mainpuri during pendency of the trial.
3. Learned counsel for the applicant submits that technically this is second bail application filed on behalf of the applicant as the first bail application of the applicant was dismissed on 10.12.2019 for want of prosecution but the first bail application of the applicant was not decided on merit.
4. He further submits that although applicant is husband of the deceased but on the basis of false allegation of demand of dowry and torture, he has been made accused in the present matter. He further submits that actually deceased was not happy with her marriage with the applicant, therefore, she within six months of her marriage committed suicide.
5. He further submits that even post mortem report of the deceased also suggests that she died due to hanging. He further submits that applicant is in jail since 06.03.2017 i.e. for more than six and half years and till date trial of the case could not be concluded. He further submits that applicant has almost served minimum sentence of seven years provided under Section 304B IPC, therefore, even after considering his long incarceration, he is entitled to be released on bail.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that although applicant is husband of the deceased but post mortem report suggests that deceased died due to hanging and applicant is in jail for more than six and half years.

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

8. From the perusal of record, it appears that this is second bail application filed on behalf of the applicant but it appears that his first bail application was dismissed for non prosecution and applicant, who is husband of the deceased, is in jail since 06.03.2017 i.e. for more than six and half years, therefore, it appears that applicant has almost served minimum sentence of seven years provided under Section 304B IPC and it is a case, in which, wife of the applicant died due to hanging, therefore, argument advanced by learned counsel for the applicant cannot be completely brushed aside at this stage.

9. Therefore, considering the facts and circumstances of the case particularly long incarceration of the applicant of more than six and half years, in my view, applicant is entitled to be released on bail.

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

11. Let the applicant - **Mohammad Yasiv** 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.

12. 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.

13. 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 :- 3.11.2023

AK Pandey