

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5651 of 2022

Applicant :- Shyamvir

Opposite Party :- State of U.P.

Counsel for Applicant :- Prem Narayan Singh, Mahipal Singh, Ramesh Chandra Yadav, Ravi Yadav, Shelendra Kumar, Sr. Advocate

Counsel for Opposite Party :- G.A., Neeraj Singh Yadav

Hon'ble Sameer Jain, J.

1. The instant bail application is listed today before this Bench pursuant to the order dated 01.11.2023 passed by Hon'ble The Chief Justice, by which, the instant matter was nominated to this Bench.
2. Heard Sri Ramesh Chandra Yadav, learned counsel for the applicant, Sri Neeraj Singh Yadav, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 119 of 2021, under Sections 498A, 323, 504, 506, 364 IPC and Section 3/4 D.P. Act, Police Station Kagarauli, District Agra during pendency of the trial.
4. FIR of the present case was lodged against applicant and his family members and according to the FIR marriage of the daughter of the informant was performed with the applicant on 22.02.2015 and after marriage applicant and his family members tortured her for Rs. 5 lakhs and also leveled false allegation of illicit relationship upon her and threatened to commit her murder.
5. It is further mentioned in the FIR that on 03.10.2021 applicant informed the informant that his daughter is missing and when he arrived at her matrimonial home then daughter of his daughter aged about three years informed the informant that applicant and his brother committed the murder of her mother. It is further mentioned in the FIR that the statement of the maternal grand daughter of the informant has been recorded in video.

6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and it appears that being husband of the daughter of the informant, he has been made accused in the present matter. He further submits that till date even the dead boy of the wife of the applicant could not be recovered.

7. He further submits that applicant was in I.T.B.P. at Tibbet Border and behind him very often his wife used to leave her matrimonial home and on 03.10.2021 when applicant came at his home then his wife had left her matrimonial home and when in spite of best efforts of the applicant, she could not recovered then on same day i.e. on 03.10.2021 applicant filed a missing report, which has been annexed as Annexure-2 to the affidavit. He further submits that FIR of the present case was lodged on 09.10.2021.

8. He next submits that although in the FIR informant stated that his maternal grand daughter informed that applicant and his brother committed the murder of her mother and this fact is in video but when video was visualized by the Investigating Officer during investigation then he found that in the video, daughter of the applicant only stated that applicant used to assault his wife and the alleged Parcha of the C.D. has been annexed along with counter affidavit filed by the informant of the case.

9. He next submits that if due to the assault made by the husband his wife gone somewhere then it cannot be presumed that applicant committed her murder. He further submits that there is no evidence on record, which can show that either applicant committed her murder or deceased herself committed suicide.

10. He further submits that bail application of co-accused Bharat Singh, the Jeth of the deceased, has been allowed by this Court vide order dated 12.01.2023 after considering the video of the daughter of the applicant. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 18.12.2021 i.e. for almost two years.

11. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submits that applicant is husband of the deceased and he used to torture his wife and his wife was missing from her matrimonial home, therefore possibility cannot be ruled out that applicant after committing the murder disposed off the body of the deceased, therefore, he should not be released on bail.

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

13. However, from the record it reflects that applicant is husband of the daughter of the informant and his wife was missing since October, 2021 but on record there is no such evidence which can indicate that applicant is the person who committed her murder and till date not even her dead body could be recovered.

14. Further, from the record it reflects that there is video clip of the grand daughter of the informant in which, she has stated to her grand father i.e. informant of the case that applicant used to make assault upon his wife but merely on the basis of such video, the presumption cannot be drawn at this stage that applicant is the person who committed the murder of his wife.

15. Further, after considering the entire facts of the case, the bail application of co-accused Bharat Singh, the Jeth of the deceased, has been allowed by this Court vide order dated 12.01.2023 passed in Criminal Misc. Bail Application No. 42959 of 2022. Further, applicant is not having any criminal history and in the present matter he is in jail since 18.12.2021 i.e. for almost two years.

16. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

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

18. Let the applicant - **Shyamvir** 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.

19. 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.

20. 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 :- 6.11.2023

AK Pandey