

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7569 of 2023

Applicant :- Dr. Abdul Bari Farookee

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammad Faisal Khan, Ashish Rai, Om Prakash Rai, Pradeep Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Shri Pradeep Kumar Tiwari, learned counsel for the applicant and Shri Shatrughan Yadav, learned AGA for the State-respondent.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No.435 of 2022, under Section 304 IPC, Police Station Gangoh, District Saharanpur, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 22.09.2022, under Section 304 I.P.C. against applicant and manager and according to the FIR, applicant was not having degree of surgery and in spite of that he conducted the operation of the wife of the informant and due to the operation conducted by the applicant, she died.
4. Learned counsel for the applicant submits that applicant is M.D. Physician and he was duly registered with Medical Council of India but as per allegation, he was not having degree of surgery and in spite of that he did the surgery of the wife of the informant and due to which, she died but entire allegation against the applicant is totally false and applicant has also got the degree of his surgery from Russia and this fact is evident from Registration Certificate of the applicant, which has been annexed at Page 33

and 35 of the paper book.

5. He further submits that even as per the post-mortem report, deceased died due to shock as a result of chronic lungs disease and injuries and therefore, it cannot be said that only due to the operation conducted by the applicant, deceased died.

6. He further submits that applicant is not having any criminal history and he in the present matter is in jail since 24.11.2022 i.e. for last more than a year.

7. Per contra, learned AGA opposed the prayer for bail and submits that applicant was not having degree of surgery and in spite of that he conducted the operation of the wife of the informant and due which, she died and even post-mortem, report suggests that deceased died due to injuries however, he could not dispute the fact that the cause of death mentioned in the post-mortem of the deceased is shock as a result of chronic lungs disease and injuries. He further could not dispute the fact that applicant is not having any criminal history and he in the present matter is in jail since 24.11.2022 i.e. for more than a year.

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

9. However, from the record, it reflects that without proper degree of surgery, applicant conducted the operation of the wife of the informant and she subsequently died but post-mortem report shows that deceased died due to shock as a result of chronic lungs disease and injuries and therefore, at this stage, it cannot be said that only due to the operation conducted by the applicant, deceased died.

10. Further, applicant is a qualified M.D. Physician and he in the present matter is in jail since 24.11.2022 i.e. for last more than a

year.

11. Therefore, considering the facts and circumstances of the case, discussed above, particularly long period of incarceration of a year, in my view, applicant is entitled to be enlarged on bail.

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

13. Let the applicant- **Dr. Abdul Bari Farookee**, 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.

14. 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.

15. 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/Zafar