

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15667 of 2023

Applicant :- Upendra Shah

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Singh

Counsel for Opposite Party :- G.A., Ram Pal Singh

Hon'ble Sameer Jain, J.

1. Rejoinder Affidavit filed on behalf of the applicant in Court today is taken on record.
2. Heard Shri Ashok Kumar Singh, learned counsel for the applicant, Dr. S.B. Maurya, learned AGA-I for the State-respondent and Shri Ram Pal Singh, learned counsel for the applicant.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.01 of 2023, under Sections 419, 420, 304, 504, 506, 120-B IPC & Sections 15(2) Indian Medical Counselling Act, Police Station Awagarh, District Etah, during pendency of the trial in the court below.
4. F.I.R. of the present case was lodged on 03.01.2023 against applicant and three others and according to the FIR, for delivery informant admitted his wife in the hospital of the applicant where her operation was conducted and thereafter she was referred to another hospital where she died. It is further mentioned in the FIR that due to negligence of the hospital run by the applicant, wife of the informant died.

5. Learned counsel for the applicant submits that entire allegation made against applicant is totally false and baseless and even from the record, it reflects that applicant is only Proprietor of the hospital and operation of the deceased was conducted by one Shikha.

6. He further submits as operation of the deceased was conducted by Shikha, who worked in the hospital of the applicant and applicant himself has taken the deceased on his Ambulance in Agra where she died, therefore, his implication is bad.

7. He further submits that from the record, it could not be said that applicant is the person, who caused the death of the deceased.

8. He further submits that applicant is having no criminal history and he is in jail in the present matter since 06.01.2023 i.e. for almost a year.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submit that without any document, applicant was illegally running the hospital where Shikha was working and she conducted the operation of the wife of the informant and due to that she died, therefore, applicant cannot escape from his liability.

10. However, both the counsels could not dispute the fact that when condition of the wife of the informant started deteriorating then applicant himself has taken her to Agra and further that applicant is in jail in the present matter since 06.01.2023 i.e. for almost a year.

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

12. However, from the record, it reflects that without any proper document, applicant was illegally running the hospital where wife of the informant was admitted for delivery and her operation was conducted by an unqualified doctor namely Shikha and due to which, she died in another hospital therefore from the record, it reflects that operation of the deceased was not conducted by the applicant. Record further shows, when condition of the deceased was started deteriorating then applicant himself has taken her to Agra and this fact is evident from Annexure R.A.-1 to the rejoinder affidavit filed in support of the instant bail application.

13. Further, applicant is having no criminal history and he is in jail in the present matter since 06.01.2023 i.e. for almost a year.

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

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

16. Let the applicant- **Upendra Shah**, 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.

17. 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.

18. 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 :- 7.12.2023

Zafar