

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17391 of 2023

Applicant :- Shyam Ji

Opposite Party :- State of U.P.

Counsel for Applicant :- Manvendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Manvendra Singh, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 73 of 2021, under Sections 304-B, 498-A IPC & 3/4 D.P. Act, Police Station- Mirzapur, District- Shahjahanpur, 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 solemnized with the daughter of the informant about 10 months before and after marriage, applicant and his family members tortured her for Rs. 1 lac and motorcycle and on 10.03.2021 due to non-fulfillment of demand of dowry, they have committed her murder.

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 satisfied with her marriage with the applicant as he was a poor labour and victim wanted to solemnize her marriage with some other person and therefore, committed suicide. He further submitted that the fact that applicant is labour is also evident from the statements of independent witnesses, which have been annexed alongwith the instant bail application.

5. He further submitted that actually deceased consumed pesticides and immediately after the incident, applicant and his family members admitted her in the hospital and this fact is evident from

the letter of the in-charge, Medical Officer, Primary Health Center, Jariyanpur, Shahjahanpur, which has been annexed as page no. 78 of the paper book. He further submitted that unfortunately in spite of the best efforts of the doctor, deceased died and after her death, a false story has been cooked up by the informant and he implicated the applicant and his family members in the present matter.

6. He further submitted that according to the post-mortem report of the deceased, cause of death could not be ascertained and viscera was preserved and now viscera report is on record and according to the viscera report also, deceased died due to consumption of pesticides.

7. He further submitted that applicant is not having any criminal history and he is in jail since 25.01.2022 i.e. for last almost two years.

8. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is the husband of the deceased and his wife died within 10 months of her marriage under abnormal circumstances in her matrimonial home and there is also allegation of demand of dowry but could not dispute the fact that from Annexure No. 10 to the affidavit (page no. 78 of the paper book), it reflects that applicant and his family members admitted the deceased in the hospital. He further could not dispute the fact that deceased died due to consumption of pesticides and applicant is in jail for last almost two years.

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

10. However, applicant is the husband of the deceased and his wife died within 10 months under abnormal circumstances in her matrimonial home and there is also allegation of demand of dowry but it appears that deceased died due to consumption of pesticides. Further, after the incident, applicant and his family members admitted her in the hospital, therefore, defence taken by the applicant cannot be completely brushed aside at this stage.

11. Further, applicant is not having any criminal history and he is in jail since January, 2022 i.e. for last almost two years.

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

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

14. Let the applicant- **Shyam Ji** 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.

15. 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.

16. 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 :- 6.12.2023

KK Patel