

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17800 of 2023

Applicant :- Gaurav

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar, Pankaj Kumar Tyagi, Rahul Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Ajay Kumar Pandey, Advocate, holding brief of Sri Rahul Pandey, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 138 of 2022, under Sections 498-A, 304-B IPC & 3/4 D.P. Act, Police Station- Sadabad, District- Hathras, during pendency of the trial in the court below.
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 04.05.2021 and after marriage, applicant and his family members tortured her for dowry and on 27.04.2022, informant received an information with regard to condition of his daughter and when he arrived at hospital then found that on the face of his daughter there was bluish marks and it appears that some poisonous substance was administered to her. It is further mentioned in the FIR that on 27.04.2022 in the afternoon during treatment his daughter died. It is further mentioned in the FIR that at the time of death, deceased was having five months' pregnancy.
5. 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 neither in the FIR nor in the statements of the witnesses recorded during investigation, there was any specific demand of dowry could be disclosed.

6. He further submitted that when informant and other witnesses of fact appeared before the trial court then they did not support the prosecution case and they have been declared hostile.

7. He further submitted that actually deceased i.e. wife of the applicant was short tempered lady and it appears that due to her behaviour, she consumed some poisonous substance and died. He further submitted that however, in autopsy report of the deceased cause of death could not be ascertained and her viscera was preserved and now viscera report is on record and as per the viscera report, deceased died due to consumption of Aluminum Phosphide.

8. He further submitted that applicant is not having any criminal history and he is in jail since 01.09.2022 i.e. for last more than a year.

9. Per contra, learned AGA however, opposed the prayer for bail but could not dispute the fact that applicant is in jail for last more than a year and all the witnesses of fact including informant during trial did not support the prosecution case and have been declared hostile.

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

11. However, applicant is husband of the deceased and his wife died within a year of her marriage under abnormal circumstance and viscera report of the deceased suggests that she died due to consumption of Aluminum Phosphide but from the record, it reflects that neither in the FIR nor in the statements of the witnesses recorded during investigation under Section 161 Cr.P.C., there was any specific allegation of demand of dowry, therefore, it appears that FIR was lodged on the basis of vague and general allegation of demand of dowry.

12. Further, when informant and other witnesses of fact appeared before the trial court then they did not support the prosecution case and have been declared hostile and their statements have been appended alongwith the instant bail application and supplementary affidavit filed in support of the instant bail application.

13. Further, applicant is not having any criminal history and he is in jail since 01.09.2022 i.e. for last more than 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- **Gaurav** 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 :- 4.12.2023

KK Patel