

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20169 of 2023

Applicant :- Jeeshan

Opposite Party :- State of U.P.

Counsel for Applicant :- Mrityunjay Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A., and perused the material on record.

2. Learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. The applicant is the husband of the deceased. The applicant never demanded dowry or did he torture the deceased. In fact, the applicant always kept the deceased with full love and affection. The applicant is bereaved by the death of his wife and prays for peace of the departed soul. However, for the purpose of the bail application, it is submitted that the deceased was a temperamental lady who was prone to extreme reactions even on trivial issues. No prima facie offence is made out against the applicant. He further submits that the applicant has two children, the informant's side are not looking after them, whereas in the family of the applicant too, there is no one to look after them properly, except the ailing parents of the applicant and in this regard supplementary affidavit has been filed, which has already been taken on record. He further submits that the applicant is languishing in jail since last more than 2,1/2 years and that trial is progressing at a slow pace and has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of *Indrani Pratim Mukerjea Vs. Central Bureau of Investigation and*

another passed in Special Leave to Appeal (Crl.) No. 1627 of 2022 to submit that prolonged incarceration of a person as an under trial is against his fundamental rights under Article 21 of the Constitution of India. It is submitted that there is no occasion now for the applicant to tamper with any witness or to flee from judicial process. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It is further contended by learned counsel for the applicant that the applicant is languishing in jail since 07.03.2021.

3. Learned AGA for the State could not satisfactorily dispute the aforesaid submissions from the record. He does not contest the criminal history of the applicant as disclosed in the bail application.

4. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, there is no one to nourish the minor children of the applicant, and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicant has made out a case for bail. Hence the bail application is allowed.

5. Let applicant Jeeshan involved in Case Crime No.121 of 2021 under Sections 498A, 304-B I.P.C., and Section 3/4 of Dowry

Prohibition Act, Police Station Civil Lines, District Aligarh, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

I. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

II. The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

III. In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

IV. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

6. In case of breach of any of the above conditions, it shall be a

ground for cancellation of bail.

7. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 3.11.2023

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