

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 28651 of 2022

Applicant :- Vipin Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Mohan, Abhilasha Singh, Akhilesh Singh, Anita Singh, Ashutosh Yadav, Bhishm Pal Singh, Kumari Poonam Rajpoot, Prem Babu Verma, Shivam Yadav, Shyam Lal

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Ms. Abhilasha Singh, learned counsel for the applicant and Shri Brijesh Pratap Singh, learned A.G.A. for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.102 of 2020, under Sections 498-A, 304-B IPC & Section 3/4 D.P. Act, Police Station Saket, District Etah, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 24.06.2020 against applicant and his family members and according to the F.I.R., marriage of the applicant was solemnized with the daughter of the informant on 13.05.2019 and after solemnization of the marriage, applicant and his family members started torturing her for additional dowry of Rs.1,00,000/- and a golden chain and on 18.06.2020, applicant and his family members for non-fulfilment of dowry badly beaten her and due to the assault made by them, she was admitted to the hospital and during treatment she died. It is further mentioned in the FIR that deceased was having pregnancy of six months.

4. Learned counsel for the applicant submits that applicant is 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.

5. She further submits that the wife of the applicant i.e. deceased was open minded lady and some dispute arose between husband and wife and due to her life style in anger, she consumed poison.

6. She further submits that immediately after the incident, informant was informed and thereafter he has taken the deceased to the hospital situated in Kaimganj and applicant and his family members also accompanied him but in spite of best effort of the doctor, she died.

7. She further submits that during autopsy the cause of death could not be ascertained and viscera was preserved but now viscera report is on record, which suggests that deceased died due to the consumption of Aluminium Phosphide.

8. She further submits that however informant during investigation supported the version of FIR but when he appeared before the trial court then in his examination-in-chief however he supported the prosecution case but on the same day when his cross-examination was recorded then he resiled from his examination-in-chief and did not support the prosecution case and categorically stated that there was no demand of dowry and applicant himself spent money on the treatment of the deceased i.e. his wife.

9. She further submits that applicant is not having any previous criminal history and he is in jail since 07.07.2020 i.e. for almost three and a half years and he has already served almost 50% of the

minimum sentence of seven years provided under Section 304-B I.P.C.

10. Per contra, learned AGA opposed the prayer for bail and submits that applicant is husband of the deceased and his wife died within one year of her marriage under abnormal circumstances and there is also allegation of demand of dowry and torture but could not dispute the fact that however when informant appeared before the trial court then in his examination-in-chief, he supported the prosecution case but on the same day when his cross-examination was recorded, he did not support the prosecution case and categorically stated that there was no demand of dowry and applicant himself spent huge amount of money on the treatment of the deceased i.e. his wife.

11. Learned A.G.A. also could not dispute the fact that it is a case of poisoning and possibility of suicide cannot be ruled out and applicant is in jail for almost three and a half years.

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

13. However, applicant is husband of the deceased and there is also allegation of demand of dowry and torture and it appears that she died in her matrimonial home due to consumption of poison within a year of her marriage and at the time of death, she was having pregnancy of six months but it reflects from the record that however during investigation, informant supported the version of FIR but when he appeared before the trial court then in examination-in-chief, he supported the version of the FIR but on same day when is cross-examination was recorded then he did not support his examination-in-chief and categorically stated that there was no demand of dowry and applicant himself spent huge amount

of money on the treatment of the deceased i.e. his wife, therefore, it appears that defence taken by learned counsel for the applicant has been corroborated by the informant i.e. father of the deceased during his cross-examination recorded by the trial court.

14. Further, applicant is not having any previous criminal history and he is in jail since 07.07.2020 i.e. for almost three and a half years and he has already served almost 50% of the minimum sentence of seven years provided under Section 304-B I.P.C. and as viscera report of the deceased suggests that she died due to consumption of the poison therefore, possibility of suicide cannot be ruled out at this stage.

15. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant, who is however husband of the deceased, is entitled to be enlarged on bail.

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

17. Let the applicant- **Vipin Kumar**, 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.

18. 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.

19. 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 :- 5.12.2023
Zafar