

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33119 of 2023

Applicant :- Devendra Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Amit Daga, Anchal Kumar Rao

Counsel for Opposite Party :- G.A., Santosh Kumar Srivastava

Hon'ble Sameer Jain, J.

1. Case called out in revised list. None present on behalf of the informant. However, learned AGA for the State is present.
2. Supplementary affidavit filed today on behalf of the applicant and counter affidavit filed on behalf of the State are taken on record.
3. Heard Sri Amit Daga, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State.
4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 164 of 2022, under Sections 498A, 304B IPC and Section 3/4 D.P. Act, Police Station Lahchura, District Jhansi during pendency of the trial.
5. FIR of the present case was lodged against applicant and his family members on 16.10.2022 and according to the FIR marriage of the applicant was performed with the daughter of the informant on 20.05.2022 and after marriage applicant and his family members tortured her for additional demand of Rs. 5 lakhs and due to non fulfillment of the additional demand of dowry they have committed her murder.

6. Learned counsel for the applicant submitted 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. He further submits that actually marriage of the deceased was performed along with applicant about five months before but unfortunately before marriage deceased was having affair with some other boy of her village and even after her marriage he used to harass her and only due to this reason under depression and fear she committed suicide by hanging herself.

7. He further submits that in paragraph-2 to the supplementary affidavit applicant has specifically disclosed the name of the boy with whom deceased was having love affair before her marriage. He further submits that along with supplementary affidavit, the messages of that person, which was sent by him to the applicant on 12.10.2022 have also been annexed, which shows that he used filthy and abusive language against the applicant and these messages also shown disrespect towards the deceased.

8. He further submits that immediately after the unfortunate incident informant was informed and even Gram Pradhan of the village informed the police and on his information police arrived at spot and conducted the inquest and at the time of inquest even informant of the case was present and this fact is evident from the inquest report, which has been annexed as Annexure-2 to the affidavit filed in support of present application.

9. He further submits that post mortem report of the deceased also suggests that deceased died due to hanging and except ligature mark no injury was noted by the doctor. He further submits that however after the FIR, father of the applicant was sent to jail but when he was released on bail then after released on bail he on

12.05.2023 sent an application to the higher authorities of the police, which has been annexed along with supplementary affidavit (Annexure SA-3) and from its perusal it appears that in the application dated 12.05.2023 father of the applicant also provided the details of the boy who was having love affair with the deceased before her marriage and also disclosed the mobile number of his daughter-in-law on which he used to send the SMS etc.

10. He further submits that application dated 12.05.2023 was sent through registry to the higher authorities of the police by the father of the applicant on 15.05.2023 and this fact is evident from the postal receipts, which have been annexed along with supplementary affidavit.

11. He next submits that applicant is not having any criminal history and in the present matter he is in jail since 19.10.2022 i.e. for last more than a year.

12. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is husband of the deceased and his wife died within five months of her marriage under abnormal circumstances in her matrimonial home and there is also allegation of demand of dowry but he could not dispute the fact that deceased died due to hanging and except the ligature mark doctor did not find any injury on her body.

13. He further could not dispute the fact that in paragraphs 2 and 3 of the supplementary affidavit applicant has taken a specific defence that before her marriage deceased was having love affair with a boy of village Khalari, District Banda and even after marriage he used to torture and abuse her, therefore, under pressure, depression and fear she committed suicide. He further

could not dispute the fact that applicant is not having any criminal history and in the present matter he is in jail since 19.10.2022 i.e. for last more than a year.

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

15. However, applicant is husband of the deceased and his wife died within five months of her marriage under abnormal circumstances in her matrimonial home and there is also allegation of demand of dowry but in the instant bail application applicant has taken a specific defence that deceased was having love affair with another boy of village Khalari, District Banda before her marriage and however after marriage she has broken the relationship with the boy but the boy used to torture and harass her and only due to this reason under fear and depression, she committed suicide and in support of his defence applicant also annexed the details of the Instagram messages sent by that boy to the applicant which shows that just before four days of the death of the deceased he sent very abusive and filthy messages to the applicant and these messages also shows disrespect towards the deceased.

16. Further, in paragraph-2 to the supplementary affidavit, applicant also disclosed the particulars of the boy, who was having love affair with the deceased before her marriage including his name and patronage etc., therefore, considering the peculiar facts and circumstances of the case, the defence taken by the applicant cannot be completely ruled out at this stage specially considering the fact that post mortem of the deceased suggests that she died due to ante mortem hanging and her hyoid bone was found intact.

17. Further, applicant is not having any criminal history and in the

present matter he is in jail since 19.10.2022 i.e. for last more than a year.

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

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

20. Let the applicant - **Devendra 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.

21. 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.

22. 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 :- 1.12.2023

AK Pandey