

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37499 of 2023

Applicant :- Mamta

Opposite Party :- State of U.P.

Counsel for Applicant :- Nandini Mishra, Ashish Kumar 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 Ashish Kumar Pandey, learned counsel for the applicant and Sri S.B. Maurya,
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 511 of 2022, under Section 302 IPC, Police Station Surajpur, District Gautambudh Nagar during pendency of the trial.
4. FIR of the present case was lodged against applicant and according to the FIR marriage of the applicant was performed with the deceased and due to the bad character of the applicant relationship of deceased and applicant was strained. It is further mentioned in the FIR that informant i.e. brother of the deceased was having suspicion that applicant committed murder of his brother.
5. Learned counsel for the applicant submits that applicant is wife of the deceased and totally on the basis of false allegation of her bad character she has been made accused in the present matter.
6. He further submits that post mortem report of the deceased suggests that deceased died due to asphyxia as a result of ligature

mark and doctor did not opine that asphyxia was result of strangulation. Therefore, at this stage, it cannot be said that it is a case of homicidal death.

6. He further submits that from the perusal of the statement of the autopsy surgeon recorded by the Investigating Officer annexed along with the instant bail application, it appears that deceased died due to asphyxia and his hyoid bone was found intact. This fact again suggests that it is a case of suicidal death.

7. He further submits that there is no evidence on record that applicant committed the murder of her husband i.e. deceased. He next submits that applicant is a lady and she is not having any criminal history and she is in jail since 13.8.2022 i.e. for more than a year.

8. Per contra, learned AGA opposed the prayer for bail and submits that applicant i.e. wife of the deceased was having illicit relationship with one Pankaj and from the CDR report of the applicant, it appears that she used to make several calls to him and therefore, it appears that only due to her illicit relationship with Pankaj, applicant committed the murder of the deceased by strangulating him but learned AGA could not dispute the fact that doctor who conducted the post mortem did not opine that it is a case of strangulation and he only noted that deceased died due to asphyxia as a result of ligature mark. He further could not dispute the fact that in the statement autopsy surgeon also stated that hyoid bone of the deceased was found intact.

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

10. Applicant is wife of the deceased and on the basis of her illicit relationship with one another person she has been made accused in the present matter on the basis of suspicion and although as per the

prosecution, she strangled the deceased i.e. her husband but although post mortem report suggests that deceased died due to asphyxia as a result of ligature mark but from it perusal it could not be reflected that deceased died due to asphyxia as a result of strangulation and therefore possibility at this stage cannot be ruled out completely that deceased might have been died due to asphyxia as a result of hanging.

11. Further when Investigating Officer during investigation recorded the statement of doctor who conducted the post mortem then he stated that deceased died due to asphyxia as a result of ante-morte injury and his hyoid bone was found intact.

12. Further applicant is a lady and she is in jail since 13.8.2022 i.e. for more than a year.

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

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

15. Let the applicant - Mamta 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.

16. 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.

17. 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 :- 12.10.2023

Aiman