

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39099 of 2023

Applicant :- Akhilesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Aditya Yadav, Mehtaab Alam

Counsel for Opposite Party :- G.A., Ram Govind, Ram Kumar Yadav

Hon'ble Sameer Jain, J.

1. Counter affidavits filed today on behalf of the informant as well as on behalf of the State are taken on record.
2. Heard Sri Aditya Yadav, learned counsel for the applicant, Sri Ram Govind, learned counsel for the informant and Dr. S.B. Maurya, learned AGA-I for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 393 of 2019, under Sections 498A, 304B IPC and Section 3/4 D.P. Act, Police Station Rasulabad, District Kanpur Dehat during pendency of the trial.
4. Learned counsel for the applicant submits, this is second bail application filed on behalf of the applicant. The first bail application of the applicant was dismissed by the co-ordinate Bench of this Court vide order dated 01.02.2023 passed in Criminal Misc. Bail Application No. 34431 of 2021 and he is pressing the instant second bail application mainly on the ground that applicant is although husband of the deceased but he is in jail since 26.08.2019 i.e. for more than four years and till date trial of the case could not be concluded.
5. He further submits that it is a case, in which, cause of death could not be ascertained and viscera was preserved but now viscera report is on record and in the viscera no poison was found, therefore, considering the facts and circumstances including the long incarceration of the applicant of more than four years, he may

be enlarged on bail.

6. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant is husband of the deceased and after considering the entire facts of the case, the first bail application of the applicant was dismissed. They further submits that trial of the case is at advance stage and dates are being fixed for the statements of the accused persons under Section 313 Cr.P.C., therefore, it would not be appropriate to release the applicant on bail at this stage.

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

8. From the perusal of record, it reflects that this is second bail application filed on behalf of the applicant and his first bail application was dismissed by this Court on merit and applicant is husband of the deceased.

9. Further, it also reflects from the record that trial of the case is at advance stage i.e. at the stage of Section 313 Cr.P.C. but applicant in the present matter is in jail for more than four years and from the post mortem report it appears that although there was ligature mark found on the body of the deceased but according to the doctor her hyoid bone was intact and autopsy surgeon could not ascertained her cause of death, therefore, viscera was preserved but now viscera report is on record, which has been annexed along with instant second bail application, which shows that no poison was found.

10. Therefore, considering the long incarceration of the applicant of more than four years and the fact that even in the viscera report no poison was found, in my view, applicant is entitled to be released on bail.

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

12. Let the applicant - **Akhilesh** 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.

13. 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.

14. 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.

15. However, considering the fact that trial of the case is at advance stage, trial court is directed to conclude the trial of the case within a period of three months positively from the date of production of certified copy of this order without granting any unnecessary adjournments to either of the parties, if there is no legal impediment.

Order Date :- 28.10.2023

AK Pandey