

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48052 of 2022

Applicant :- Mahboob

Opposite Party :- State of U.P.

Counsel for Applicant :- Vivek Kumar Singh, Mayank Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Compliance affidavit filed today on behalf of the State-respondent is taken on record.
2. Heard Sri Vivek Kumar Singh, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 168 of 2022, under Sections 302 IPC, Police Station Singhawali Ahir, District Baghpat, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant on 22.5.2022 under section 302 IPC and according to the FIR marriage of the applicant was performed with the sister of the informant about 15 years before and according to the FIR on 25/26.3.2022, sister of the informant died under suspicious circumstances.
5. It is further mentioned in the FIR that husband of the deceased i.e. applicant informed the informant that accidentally deceased sustained injuries and died but now informant came to know that applicant has committed the murder of the deceased.
6. It is further mentioned in the FIR that on the information of the informant after digging the dead body of the deceased was recovered and post mortem was conducted and in the post mortem also there was mark of injuries and informant is having suspicion that applicant committed the murder of the deceased.
7. Learned counsel for the applicant submitted that applicant is husband of the deceased and entire allegation made against the applicant is totally false and FIR of the present case was lodged after two months of the alleged incident.

8. He further submitted that since beginning it was the case of the applicant that accidentally deceased sustained injuries and died and in the post mortem although doctor noted fracture of the parietal bone but cause of death could not be ascertained and viscera was preserved.

9. He further submitted that now viscera report is on record which has been filed by the State and from its perusal, it appears that no poison was found and therefore, there is no evidence against the applicant which can show that applicant committed the murder of the deceased.

10. He further submitted that even if it is presumed that applicant caused injury on the parietal bone of the deceased which was noted by the doctor in the post mortem then also as due to this injury deceased did not die, therefore, applicant cannot be liable for her death.

11. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 22.5.2022 i.e. for almost one and half year.

12. Per contra, learned AGA opposed the prayer for bail and submitted that the applicant is husband of the deceased and post mortem report of the deceased suggests that she sustained injuries on her parietal bone and doctor also found fracture on the parietal bone of the deceased but could not dispute the fact that cause of death could not be ascertained and therefore, viscera was preserved and in the viscera report, there was no poison was found.

13. He further could not dispute the fact that it is not a case of eye witness account and FIR was lodged after two months.

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

15. Although, applicant is husband of the deceased and from the post mortem, it reflects that deceased i.e. wife of the applicant sustained injuries on her parietal bone and autopsy surgeon also found fracture on the parietal bone of the deceased but her cause of death could not be ascertained and her viscera was preserved and according to the viscera report, which has been filed by the learned AGA alongwith the compliance affidavit no poison was found, therefore, I find force in the argument advanced by learned counsel for the applicant that due to the alleged injury sustained by the deceased, she did not die.

16. Further, FIR of the present case was lodged after two months and as per the applicant i.e. husband of the deceased, deceased sustained serious injuries on her head accidentally and this fact has itself been mentioned in the FIR that applicant informed the informant that deceased sustained accidental injury and died, therefore, defence taken by the applicant cannot be completely brushed aside, at this stage.

17. Further, applicant is not having any criminal history and he is in jail in the present matter since 22.5.2022 i.e. for almost one and half years.

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-**Mahboob**, 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 :- 27.10.2023

Ankita