

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43696 of 2023

Applicant :- Aysher Ali

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudhir Kumar, Pravin Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Sudhir Kumar, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 350 of 2022, under Sections 304-B, 498-A IPC & 3/4 D.P. Act, Police Station- Binawar, District- Budaun, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and his family members and according to the FIR, marriage of the applicant was performed with the daughter of the informant in the year 2021 and after marriage, applicant and his family members tortured her for want of a Tractor and Rs. 2 lacs and on 08.12.2022 they hanged his daughter i.e. deceased due to non fulfillment of demand of dowry.
4. Learned counsel for the applicant submitted that applicant is the husband of the deceased and entire allegation of demand of dowry and torture made against him is totally false and baseless. He further submitted that actually deceased was a short tampered lady and some dispute due to poverty of the applicant arose between husband and wife and thereafter she hanged herself.
5. He further submitted that from the perusal of the statements of the independent witnesses recorded by the IO under Section 161 Cr.P.C., which have been annexed along with the instant bail application, it also reflects that due to dispute arose between husband and wife, deceased hanged herself.
6. He further submitted that immediately after the incident, applicant and his family members rushed to the hospital but unfortunately deceased died and the fact that applicant has taken

the deceased to the hospital is also reflects from the statement of the informant recorded under Section 161 Cr.P.C.

7. He further submitted that from the statement of the informant recorded under Section 161 Cr.P.C., it appears that on the application of the informant and his family members, inquest was conducted but in spite of that FIR was lodged on 11.12.2022 i.e. after three days and this fact clearly suggests that after three days a false story of demand of dowry and torture has been cooked up.

8. He further submitted that applicant is not having any criminal history and he is in jail since 07.01.2023 i.e. for more than nine months.

9. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is the husband of the deceased and his wife died within a year of her marriage under abnormal circumstances and there is also allegation of demand of dowry but could not dispute the fact that as per the post-mortem report of deceased, she died due to hanging and independent witnesses in their statements stated that some dispute arose between husband and wife and she hanged herself.

10. Learned AGA further could not dispute the fact that from the statement of the informant recorded under Section 161 Cr.P.C., it reflects that after incident, applicant and his family members had taken the deceased to the hospital situated at Binawar and FIR of the present case was lodged after three days.

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

12. Although, applicant is the husband of the deceased and his wife died within seven years of her marriage under abnormal circumstances and there is also allegation of demand of dowry but it appears from the statement of the informant recorded under Section 161 Cr.P.C. that after the incident, applicant and his family members had taken the deceased to the hospital situated at Binawar where she was declared dead.

13. Further, from statements of the independent witnesses recorded by the Investigating Officer, it appears that on the date of incident, applicant and deceased were alone in the house and some dispute arose between husband and wife and thereafter wife i.e. deceased hanged herself. Defence taken by the applicant in the light of the statements of the independent witnesses cannot be completely

brushed aside at this stage.

14. Further, from the record, it reflects that FIR of the present case was lodged after three days, however, inquest was conducted on the application moved by the informant side.

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

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

17. Let the applicant- **Aysher Ali** 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 :- 13.10.2023

KK Patel