

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49229 of 2022

Applicant :- Abhishek @ Vimlesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Jata Shankar Pandey, Vijay Singh Sengar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Jata Shankar Pandey and Sri Vijay Singh Sengar, learned counsel for the applicant and Sri S. B. Singh, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 58 of 2022, under Sections 498A, 304B IPC and section 3/4 D.P. Act, Police Station Pinahat, District Agra, during pendency of the trial in the court below.

3. FIR of the present case was lodged against the applicant and his family members and according to the FIR, marriage of the applicant was performed with the deceased about six years before and after marriage, applicant and his family members tortured the deceased for golden chain, motorcycle and ring and on 11.4.2022, informant received an information that applicant and his family members committed the murder of his sister i.e. deceased.

4. Learned counsel for the applicant submitted that applicant is the husband of the deceased and entire allegations of demand of dowry and torture made against him are totally false.

5. He further submitted that although in the FIR and in the statement recorded under section 161 Cr.P.C., informant i.e. brother of the deceased made allegation of torture and demand of dowry against the applicant and his family members but during investigation when he was produced before the Magistrate concerned and his statement under section 164 Cr.P.C. was recorded then he categorically stated that in haste due to mistake he lodged the FIR of the present case.

6. He further submitted that when informant and his father i.e. also father of the deceased appeared before the trial court then they also did not support the prosecution case and they have

declared hostile.

7. He further submitted that actually deceased i.e. wife of the applicant committed suicide by hanging herself as even after six years of marriage, she could not conceive.

8. He further submitted that post mortem of the deceased suggests that she died due to hanging and her hyoid bone was found intact.

9. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 4.5.2022 i.e. for almost one and half years.

10. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is husband of the deceased and his wife died under abnormal circumstances within seven years of her marriage and there is also allegation of demand of dowry but could not dispute the fact that during investigation, in the statement recorded under section 164 Cr.P.C. informant stated that due to mistake, in haste, he lodged the FIR of the present case and he further could not dispute the fact that when informant and his father i.e. also father of the deceased appeared before the trial court during trial then both did not support the prosecution case and were declared hostile.

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

12. From the perusal of the record, it reflects that applicant is the husband of the deceased and his wife died within seven years of her marriage under abnormal circumstances and there was allegation of demand of dowry but it appears that during trial when informant and his father i.e. father of the deceased appeared before the trial court then they did not support the prosecution case and they have declared hostile.

13. Further, from the record it also reflects that during investigation, statement of the informant was also recorded by the Magistrate concerned under section 164 Cr.P.C. and in his statement recorded under section 164 Cr.P.C. informant stated that in haste, due to mistake he lodged the FIR of the present case.

14. Further, applicant is having no previous criminal history to his credit and he is in jail in the present matter since 4.5.2022 and from perusal of the post mortem report, it appears that deceased died due to hanging and her hyoid bone was found intact, therefore, defence taken by the applicant cannot be

completely brushed aside, at this stage.

15. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant 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-**Abhishek @ Vimlesh**, 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 :- 28.10.2023

Ankita