

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52354 of 2022

Applicant :- Satendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajrshi Gupta, Ravi Shankar Tripathi, Rizwan Ahamad, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri R. S. Tripathi, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 30 of 2021, under Section 302 IPC, Police Station- Kadar Chowk, District- Budaun, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant on 02.02.2021 and according to the FIR, applicant after entering in the house of the informant tried to commit rape upon his *bhabhi* and on her resistance, he inflicted knife injury on her abdomen and due to which, she sustained serious abdominal injury. It is further mentioned in the FIR that applicant also tried to administer Acid to the injured.
4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 452, 354, 323, 326-A, 307 IPC but when injured i.e. *bhabhi* of the informant died on 17.06.2022, then case was converted under Section 302 IPC. He further submitted that however, injured since deceased in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that after entering in the house, applicant tried to commit rape upon her and on her resistance, inflicted knife injury but there are material contradictions in her both the statements.
5. He further submitted that applicant is in jail since 02.02.2021 i.e. for last more than two and half years and till date, statement of P.W. 1 could not be even concluded, however, charges were framed against the applicant on 14.03.2022, therefore, it appears that trial of the case is moving with languid pace and there is no

hope of its early disposal. He further submitted that applicant is not having any previous criminal history, therefore, he may be released on bail.

6. Per contra, learned AGA opposed the prayer for bail and submitted that before death of the deceased when she was injured then her statements under Sections 161 Cr.P.C. and 164 Cr.P.C. were recorded and in her both the statements, she categorically stated that applicant caused knife injury to her and her both the statements are her dying declaration, therefore, considering these statements of the deceased, applicant should not be released on bail.

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

8. However, from the record, it reflects that applicant is in jail for last more than two and half years but it is a case in which, as per the prosecution, after entering in the house of the deceased, who was a lady, applicant tried to commit rape upon her and on her resistance, he administered Acid to her and also caused knife injury to her.

9. From the record, it also reflects that statements of the deceased, when she was injured, were recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. and in her both the statements she categorically stated that applicant after entering in her house tried to commit rape upon her and on her resistance inflicted knife injury to her and in her statement recorded under Section 164 Cr.P.C., she also stated that applicant administered Acid to her. I find force in the argument advanced by learned AGA that both the statements of the injured since deceased can be considered as her dying declaration, therefore, I am not inclined to release the applicant on bail at this stage.

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

11. 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.

12. However, considering the fact that applicant is in jail for more than two and half years, trial court is directed to conclude the trial of the case within a period of nine months from the date of

production of certified copy of this order, strictly as per the provisions of Section 309 Cr.P.C. on day-to-day basis without granting any unnecessary adjournment to either of the parties, if there is no legal impediment.

Order Date :- 4.12.2023

KK Patel