

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42946 of 2023

Applicant :- Kishan Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajeev Kumar Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Sharad Kumar, learned Advocate, holding brief of Sri Rajeev Kumar Ojha, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.452 of 2022, under Sections 498-A and 304-B IPC and Section 3/4 Dowry Prohibition Act, Police Station Sigra, District Varanasi during pendency of the trial.
3. FIR of the present case was lodged against the applicant and his family members and according to the FIR, marriage of applicant was performed with the deceased on 9.6.2022 and after marriage applicant and his family members tortured the deceased for dowry and applicant was also having illicit relationship with some other lady and due to torture of applicant and his family members victim on 3.12.2022 hanged herself.
4. Learned counsel for the applicant submits that applicant is the husband of the deceased and on the basis of false allegation of torture and demand of dowry he has been made accused in the present matter.

5. He further submits that in the FIR only vague allegation of demand of dowry was levelled. However, in the statement recorded under Section 161 Cr.P.C. informant started making allegation that there was demand of Rs.Two Lacs.

6. He further submits that actually deceased was mentally unstable and she used to left her matrimonial home and on 18.10.2022 when she left her matrimonial home then after her search an agreement was executed between applicant and family members of the deceased which has been annexed as annexure-9 to the affidavit filed in support of the present bail application and from the perusal of the mutual agreement dated 11.11.2022 it appears that she was not mentally stable.

7. He further submits that only due to unstable mental condition deceased committed suicide.

8. He further submits that even as per the post mortem report deceased died due to hanging and her hyoid bone was found intact.

9. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 5.12.2022, i.e., for the last more than 10 months.

10. Per contra, learned AGA opposed the prayer for bail and submits that applicant is the husband of the deceased and his wife died under abnormal circumstances in her matrimonial home within six months of her marriage and, therefore, considering the provisions of Section 304B IPC and Section 113 Indian Evidence Act, he should not be released on bail.

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

12. However, from the record it reflects that applicant is the husband of the deceased and his wife died within six months of her marriage under abnormal circumstances and there is also allegation of demand of dowry but from the perusal of the record it reflects that prosecution story runs in two folds and according to the prosecution, deceased was tortured by applicant and his family members due to demand of dowry and due to the reason that applicant was having illicit relationship with some other lady.

13. Therefore due to the second reason if deceased committed suicide then obviously provisions of Section 304B IPC will not be attracted.

14. Further, in the FIR no specific demand of dowry could be disclosed by the informant, however, in the statement under Section 161 Cr.P.C. he stated that there was also demand of Rs.Two Lacs.

15. Further, from annexure-9 to the affidavit filed in support of the present bail application it reflects that an agreement was executed between applicant and family members of the deceased before her death and from this agreement it reflects that deceased very often left her matrimonial home due to her mental condition and therefore, argument advanced by the learned counsel for the applicant that due to her mental condition deceased committed suicide, cannot be completely brushed aside.

16. Further, the genuineness of Annexure-9 to the affidavit, i.e., mutual agreement which has been disclosed along with the instant bail application could not be disputed by the prosecution.

17. Further, post mortem report of the deceased suggests that she

died due to hanging and her hyoid bone was found intact

18. Further, applicant is not having any previous criminal history and he is in jail in the present matter since December, 2022, i.e., for the last more than ten months.

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

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

21. Let the applicant-**Kishan Kumar** 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.

22. 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.

23. 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 :- 26.10.2023
SKM