

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43475 of 2023

Applicant :- Sonu

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Mishra, Santosh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Although this is the second bail application filed on behalf of the applicant but from the record it reflects that the first bail application of the applicant was dismissed for non prosecution on 1.5.2019 vide Criminal Misc. Bail Application No. 41733 of 2017. Therefore, the instant bail application is being heard on merit.

2. Heard Sri Ajay Kumar Mishra, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, learned AGA, for the State.

3. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.173 of 2016, under Sections 498A, 304B and 323 IPC and Section 3/4 Dowry Prohibition Act, Police Station Inchauli, District Meerut during pendency of the trial.

4. FIR of the present case was lodged against the applicant and his family members on 6.5.2016 and according to the FIR, marriage of applicant was performed with the deceased on 25.2.2012 and after marriage applicant and his family members tortured the deceased for want of dowry and on 29.4.2016 applicant and his family members ablated her and her child. It is further mentioned in the FIR that deceased was having pregnancy of five months.

5. Learned counsel for the applicant submits that although technically this is second bail application but the first bail application of the applicant was dismissed for non-prosecution and till date the bail application of the applicant has not been disposed of on merit.

6. He further submits that applicant is the husband of the deceased and on the basis of false allegation he has been made accused in the present matter.

7. He further submits that although during investigation dying declaration of the deceased was recorded by Naib Tehsildar and in the dying declaration she stated that applicant ablated her but in the dying declaration she did not make any allegation of demand of dowry nor she stated that applicant also ablated her child and this fact clearly suggests that on the basis of false allegation, FIR of the present case was lodged.

8. He further submits that as deceased sustained more than 80% burn injury, therefore, dying declaration appears to be doubtful.

9. He further submits that applicant is in jail in the present matter since 5.7.2016, i.e., for the last about more than seven years and till date trial of the case could not be concluded.

10. He further submits that in the charge sheet there are as many as 20 prosecution witnesses and till date only 5 prosecution witnesses could be examined and examination of PW-6 is under way since 2.2.2021.

11. He further submits that since 2.2.2021 PW-6, i.e., Investigating Officer is not appearing before the trial court.

12. He further submits that on 27.9.2021 bailable warrants were issued against Investigating Officer and thereafter on 7.1.2022

NBW was issued but in spite of that till date he could not appear and this fact clearly suggests that trial of the case is moving with languid pace and there is no hope of its early disposal. He placed reliance on the judgment of the Apex Court in the case of **Union of India Vs. K.A.Najeeb, (2021)2 SCC202** and submitted that as without any fault of applicant trial of the case is pending for several years and, therefore, it is violation of fundamental right of applicant provided under Article 21 of the Constitution of India.

13. He further submits that applicant is not having any criminal history and considering his long incarceration of more than seven years, he may be released on bail.

14. Per contra, learned AGA opposed the prayer for bail and submits that applicant is the husband of the deceased and deceased in her dying declaration recorded by Naib Tehsildar clearly stated that applicant abused her but could not dispute the fact that applicant is in jail since 5.7.2016, i.e., for more than seven years and till date out of 20 prosecution witnesses only 5 witnesses could be examined and for the last 2-1/2 years in spite of several dates were fixed by trial court PW-6, the Investigating Officer, is not appearing before the trial court.

15. He further could not dispute the fact that coercive measures are also being taken against PW-6, the Investigating Officer.

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

17. Although, applicant is the husband of the deceased and there is also dying declaration of the deceased on record and in the dying declaration deceased stated that applicant abused her but in the present matter applicant is in jail since July, 2016, i.e., for the last about more than 7 years and from the record it reflects that

trial of the case is moving with snail's speed and till date out of 20 prosecution witnesses only five witnesses could be examined.

18. Record further suggests that PW-6, the Investigating Officer, is not turning since 15.2.2021 and on 27.9.2021 trial court also issued NBW against him and on 7.1.2022 NBW was issued against him.

19. It is really painful to note that Investigating Officer, who is Police Officer, miserably failed to discharge his duties and in spite of repeated summons and warrants issued against him, he is not appearing before the trial court and he is being summoned for the last more than 2-1/2 years and, therefore, it appears that without any fault of applicant trial of the case is pending since long and applicant is in jail for the last more than seven years.

20. The Apex Court repeatedly observed speedy trial is a fundamental right of an accused provided under Article 21 of the Constitution of India and if it is violated then applicant may be enlarged on bail.

21. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant who is in jail for the last more than 7 years, is entitled to be released on bail.

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

15. Let the applicant-**Sonu** 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.

16. 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.

17. 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 :- 12.10.2023

SKM