

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43691 of 2023

Applicant :- Faijan Ali@ Ehasan Ali

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikas Srivastava, Rakesh Kumar Srivastava, Sachchida Nand Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Vikas Srivastava, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 143 of 2019, under Sections 498-A, 304-B IPC & 3/4 D.P. Act, Police Station- Jafarganj, District- Fatehpur, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and his family members on 03.10.2019 through an application under Section 156(3) Cr.P.C. dated 06.03.2019 and according to the FIR, marriage of the applicant was performed with the deceased on 29.05.2012 and after marriage, applicant and his family members tortured the deceased for demand of a motorcycle and due to non-fulfillment of the demand of dowry, they have committed the murder of the deceased by administering some poisonous substance and information of the death of the deceased was received by the informant on 13.02.2019.
4. Learned counsel for the applicant submitted that applicant is the husband of the deceased and on the basis of false allegation of demand of dowry and torture, he has been made accused in the present matter. He further submitted that deceased died on 13.02.2019 and in spite of information, application under Section 156(3) Cr.P.C. for lodging the FIR was moved on 06.03.2019 i.e. after three weeks.
5. He further submitted that informant and other family members of the deceased were present at the time of inquest and at that time they did not raise any objection and after three weeks, uncle of the

deceased moved an application under Section 156(3) Cr.P.C. and on his application, FIR of the present case was lodged on 03.10.2019.

6. He further submitted that during investigation, the allegation made against the applicant and his family members was found false and, therefore, on 25.02.2020 final report was submitted but on the protest petition, applicant was summoned in the instant matter on 15.09.2022.

7. He further submitted that actually deceased i.e. wife of the applicant committed suicide by consuming poisonous substance as she delivered a feeble and ill child, who unfortunately died and under depression, she committed suicide.

8. He further submitted that applicant is not having any criminal history and he is in jail since 14.07.2023

9. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is the husband of the deceased and as per the viscera report, deceased died due to consumption of Aluminum Phosphide and, therefore, applicant is rightly summoned in the present matter and he does not deserve bail.

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

11. Although, from 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 is also allegation of demand of dowry but FIR of the present case was lodged after several months through an application under Section 156(3) Cr.P.C. and even application 156(3) Cr.P.C. was moved after three weeks. Record further suggests that informant and other family members of the deceased were present at the time of inquest.

12. Further, during investigation, the allegation made against the applicant was found false and thereafter when protest petition was filed then final report submitted by the investigating officer was dismissed and applicant was summoned.

13. Further, from the perusal of the post mortem report of the deceased, it appears that cause of death could not be ascertained and viscera was preserved and as per the viscera report, deceased died due to consumption of poison.

14. Learned counsel for the applicant in defence submitted that as a year before deceased i.e. wife of the applicant delivered a feeble and weak child, who unfortunately died due to his bad health and thereafter deceased remained under depression and only due to this reason, she committed suicide by consuming poison. The defence taken by the applicant cannot be easily 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- **Faijan Ali@ Ehasan 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