

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44278 of 2023

Applicant :- Smt Afsana@ Apsana

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Shankar Kaithal

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Atul Kumar Singh, Advocate, holding brief of Sri Shiv Shankar Kaithal, learned counsel for the applicant and Sri Amarnath Vishwakarma, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 174 of 2023, under Sections 302, 201, 34 IPC, Police Station- Govindnagar, District- Kanpur Nagar, during pendency of the trial in the court below.
3. FIR of the present case was lodged by the applicant herself against her brother Salam through an application dated 03.05.2023 and according to the application on 25.04.2023 after some dispute with her husband, applicant had gone to her paternal home after calling her brother Salam, the nominated accused and since then the whereabouts of her husband is not known.
4. Learned counsel for the applicant submitted that although, on the basis of missing report, FIR of the present case was lodged on 27.05.2023 but actually dead body of the husband of the applicant had been recovered on 29.04.2023 as unknown person and his post-mortem was conducted on 02.05.2023.
5. He further submitted that during investigation when statement of Vandana Devi was recorded then she raised suspicion against the applicant on the ground that relationship between applicant and her husband i.e. deceased was not cordial one and similar statements were given by the other witnesses.
6. He further submitted that applicant is a lady and except suspicion, there is no other evidence against her on record and only being wife of the deceased, she has been made accused in the present matter.

7. He further submitted that applicant is not having any criminal history and she is in jail since 29.05.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that during investigation, Investigating Officer recorded the statement of the son of the applicant namely Rehan, who was from her first husband and he stated that when on 25.04.2023 he alongwith her mother i.e. applicant went to his matrimonial grandmother home then on 27.04.2023 deceased i.e. husband of the applicant arrived there and thereafter co-accused Ayub and Salam, the brothers of the applicant had taken him and thereafter he did not return and his dead body was found and applicant confessed her guilt before Rehan by stating that she eliminated her husband i.e. deceased but he fairly conceded that except the allegation of conspiracy, there is no other evidence against the applicant on record and applicant is a lady.

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

10. Applicant is the informant of the case and except suspicion, it appears that there is no other evidence against her on record, however, from the statement of her son, it reflects that applicant also conspired the murder of her husband i.e. deceased but even as per the statement of the son of the applicant namely Rehan, deceased had gone alongwith his brothers-in-law namely Ayub and Salam.

11. Further, applicant is a lady and she is not having any criminal history and she is in jail since 29.05.2023.

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

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

14. Let the applicant- **Smt Afsana@ Apsana** 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.

15. 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.

16. 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 :- 18.10.2023

KK Patel