

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44993 of 2023

Applicant :- Keshav Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Akhilesh K. Dwivedi

Counsel for Opposite Party :- G.A.,Durga Tiwari

Hon'ble Sameer Jain,J.

1. Heard Sri Akhilesh Kumar Dwivedi, learned counsel for the applicant, Smt. Durga Tiwari, learned counsel for the informant and Sri Imran Khan, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 65 of 2023, under Sections 498A, 304B IPC and 3/4 D.P. Act, Police Station Tamkuhiraj, District Kushi Nagar during pendency of the trial.

3. FIR of the present case was lodged against applicant and his parents and according to the FIR marriage of the applicant was performed with the deceased on 30.04.2021 and after marriage applicant and his parents tortured her for demand of Swift Car and on 08.03.2023 informant received an information through the applicant that his sister i.e. deceased had died. It is further mentioned in the FIR that when informant arrived at spot then found that the dead body of the deceased was lying at the door of the house. It is further mentioned in the FIR that applicant and his parents committed the murder of the deceased.

4. Learned counsel for the applicant submitted that applicant is husband of the deceased and on the basis of false allegation of demand of dowry and torture he has been made accused along with his parents in the present matter. He further submits that actually even after two years of her marriage, deceased could not conceive and in this regard applicant also took her to the doctor but doctor told the deceased that it is difficult for her to conceive and only due to this reason under depression she hanged herself.

5. He further submits that post mortem report of the deceased also suggests that she died due to hanging and her hyoid bone was found intact. He further submits that immediately after the incident

applicant informed the informant and this fact has been admitted by the informant in the FIR itself.

6. He further submits that when after receiving the information informant and his family arrived then in their presence Panchayatnama was prepared and father of the informant and deceased was also one of the Punch witness and at the time of inquest no objection was raised and after two days FIR of the present case was lodged and this fact clearly suggests that subsequently on the basis of false allegation of demand of dowry, applicant has been made accused in the present matter along with his parents.

7. He further submits that immediately after the incident applicant has taken the deceased to the hospital where doctor declared her dead and thereafter on the basis of information furnished by the hospital Panchayatnama of the deceased was conducted at the mortuary of the hospital but according to the FIR the dead body of the deceased was lying at her matrimonial home and this fact clearly suggests that FIR is based on false facts as Panchayatnam of the deceased falsifies this fact. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 10.03.2023.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant is husband of the deceased and his wife died within two years of her marriage under abnormal circumstances in her matrimonial home and there is also allegation of demand of dowry.

9. Learned counsel for the informant further submitted that it is hard to believe that if within two years of her marriage wife of the applicant could not conceive then she would commit suicide. She further submits that although as per defence, doctor told the deceased that it is very difficult for her to conceive but there is no medical report of the deceased on record and this fact clearly suggests that after the death of the deceased a false defence has been set up by the applicant, therefore, considering the fact that applicant is husband of the deceased, he should not be released on bail.

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

11. From the perusal of the record, it reflects that deceased was wife of applicant and she died within two years of her marriage

under abnormal circumstances in her matrimonial home and there is also allegation of demand of dowry but from the FIR it reflects that immediately after the incident applicant informed the informant and applicant has taken a stand that after the incident he has taken the deceased to the hospital where she has been declared dead and Panchayatnama of the deceased was conducted in the mortuary of the hospital but in the FIR informant stated that when after receiving the information from the applicant, he arrived at spot i.e. at the house of the applicant then found that dead body of the deceased was lying at the home, therefore, I find force in the argument advanced by learned counsel for the applicant that Panchayatnama of the deceased falsifies the fact mentioned in the FIR and in the statement of the informant recorded during investigation.

12. Further, from perusal of the Panchayatnama, which has been annexed along with instant bail application, it appears that at the time of inquest family members of the deceased were also present and her father was one of the Panch witness but in spite of that they did not make any objection at that time and FIR of the present case was lodged after two days i.e. on 10.03.2023.

13. Further, although there is no evidence available on record on the basis of which it can be said that applicant has taken the deceased to the doctor but it is true that deceased could not conceive after two years of her marriage, therefore, defence taken by the applicant cannot be completely brushed aside at this stage.

14. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant, who is however husband of the deceased, is entitled to be released on bail.

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

16. Let the applicant - **Keshav Mishra** 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.

17. 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.

18. 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

AK Pandey