

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45454 of 2023

Applicant :- Smt Bhagwati

Opposite Party :- State of U.P.

Counsel for Applicant :- Pankaj Sharma, Prashant Sharma

Counsel for Opposite Party :- G.A., Anjali Jaiswal

Hon'ble Sameer Jain, J.

1. Heard Sri Prashant Sharma, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 68 of 2023, under Sections 498-A, 304-B IPC & 3/4 D.P. Act, Police Station- Gajraula, District- Amroha, during pendency of the trial in the court below.
3. From the record, it reflects that this is the second bail application filed on behalf of the applicant and her first bail application was dismissed by this Bench on merit on 11.07.2023 and in the instant second bail application, learned counsel for the applicant has taken a plea that applicant is suffering with cancer and, therefore, a report was called from jailor concerned with regard to current health status of the applicant. Pursuant to the order dated 23.11.2023 passed by this Court, the report of the jail doctor with regard to the health status of the applicant has been received, which is on record.
4. Learned counsel for the applicant submitted that applicant is mother-in-law of the deceased and however, deceased died due to strangulation but in the FIR itself it is mentioned that husband of the deceased used to consume liquor and very often created scene in the house and, therefore, possibility cannot be ruled out that he strangled his wife and only being mother-in-law of the deceased, applicant has been made accused in the present matter but unfortunately this fact could not be argued earlier before this Court at the time of hearing of first bail application.
5. He further submitted that he is pressing the instant second bail application on the ground that applicant is lady and she is 60 years' old and she is having serious problem in her uterus and suffering

with severe bleeding. He further submitted that even as per the report of the jail doctor, applicant is suffering with the problem of bulky uterus. .

6. He further submitted that applicant is in jail since 28.01.2023 i.e. for almost a year and therefore, considering the fact that applicant is lady and she is in jail for almost a year and she is suffering with frequent bleeding and her uterus is bulky, she may be released on bail.

7. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is mother-in-law of the deceased and her daughter-in-law died due to strangulation and after considering the entire facts of the case, first bail application of the applicant was dismissed by this Court but could not dispute the fact that in the FIR it has been itself mentioned that husband of the deceased used to consume liquor and he used to torture the deceased. He further could not dispute the fact that applicant is lady and is in jail for almost a year and even as per the report of the jail doctor, she is suffering with the medical issue of bulky uterus and very often she suffered with bleeding.

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

9. This is the second bail application filed on behalf of the applicant and her first bail application was dismissed on merit by this Court on 11.07.2023 after considering the fact that her daughter-in-law died due to strangulation but from the record, it reflects that applicant is aged about 60 years and she is suffering with problem of uterus and according to the report of the jail doctor, which is on record, applicant is suffering with the problem of bulky uterus and she is also suffering with bleeding. Further, applicant is in jail since 28.01.2023 i.e. for last more than 10 months.

10. Further, from the perusal of the FIR, it reflects that son of the applicant i.e. husband of the deceased used to consume liquor and number of earlier occasions he made assault upon her and therefore, it appears that in the FIR, specific allegation of torture, demand of dowry and assault has been levelled against the husband of the deceased and this fact was not argued before this Court at the time of hearing of the first bail application of the applicant.

11. Further, applicant is lady and she is not having any criminal

history, therefore, considering the facts and circumstances of the case discussed above, particularly the fact that applicant is suffering with problem of bulky uterus and number of occasion, she used to suffer with excessive bleeding and she is in jail for more than 10 months, in my view applicant is entitled to be released on bail.

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

13. Let the applicant- **Smt Bhagwati** 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.

14. 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.

15. 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 :- 5.12.2023

KK Patel