

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45850 of 2023

Applicant :- Rahul

Opposite Party :- State of U.P.

Counsel for Applicant :- Nirbhay Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Nirbhay Singh, learned counsel for the applicant and Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Rahul**, seeking enlargement on bail during trial in connection with Case Crime No. 354 of 2022, under Section 498-A, 304-B, 323, 506, 34 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Shikohabad, District Firozabad.

3. The first information report of the present matter was lodged on 01.06.2022 by Mithilesh against the applicant, Mahesh and Suman alleging therein that her daughter Radha was married to Rahul the applicant on 15.02.2020 in which she had spent around Rs. 8 lakhs but the accused persons after marriage used to beat and torture his daughter for dowry. On 31.05.2022 at about 11.30 p.m. she received an information that her daughter has died by hanging herself. She along with family members reached the matrimonial house of her daughter where no one was present. Then she came to know from people that they have taken her daughter to Trauma Centre. She has suspicion that the applicant along with his family members has murdered her daughter. A report be lodged and action be taken.

4. Learned counsel for the applicant argued that although the applicant is the husband of the deceased but he has been falsely implicated in the present case. It is argued that the deceased committed suicide and died which is suggestive from the postmortem examination report which shows a single ligature mark on the body of the deceased and an abrasion on the left side of forehead and the cause of death has been opined as asphyxia as a result of antemortem hanging. It is argued that abrasion as found by the doctor did not contribute to the death of the deceased. It is argued that the first information report is

silent in as much as what the specific demand of dowry is involved. It is argued that trial in the present matter has started in which statement of Mithilesh was recorded who was examined as P.W.-1 and statement of Ajad Babu the brother of the deceased was examined as P.W.-2. Both the said witnesses have not supported the prosecution case and have been declared hostile. It is argued that as such the implication of the applicant in the present case is false. The applicant has no criminal history as stated in para 17 and is in jail since 02.06.2022.

5. *Per contra*, learned counsel for the State vehemently opposed the prayer for bail and argued that the applicant is the husband of the deceased. The deceased was married to the applicant on 15.02.2020 who died on 31.05.2022 which is within seven years of marriage. The death is unnatural. It is further argued that the deceased was carrying a pregnancy as the doctor conducting the postmortem examination found a foetus of 12 to 16 weeks. It is argued that in so far as the first informant is concerned, initially she supported the prosecution case. It was subsequently in the cross-examination that she gave a different version after which she was declared hostile. It is argued that the hostility of the witnesses is a matter of trial which can be considered by the trial court at the appropriate stage.

6. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is the husband of the deceased. The deceased died within seven years of marriage in her matrimonial house. The cause of death is unnatural. She was found to be carrying pregnancy of 12 to 16 weeks. Although the first informant has been declared hostile by the trial court but initially in her statement she has supported the prosecution case. Even otherwise, the hostility of witnesses is a matter to be considered by the trial court. No ground for bail is made out.

7. Looking to the facts and circumstances of the case, this Court does not find it a fit case for bail, hence, the bail application is **rejected**.

Order Date :- 31.10.2023
AS Rathore

(Samit Gopal,J.)