

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46693 of 2023

Applicant :- Santosh Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Amarnath Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Amarnath Tripathi, learned counsel for the applicant and Sri Amar Nath Vishwakaram, learned Brief Holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 474 of 2021, under Sections 498A, 304-B, 201 IPC and 3/4 D.P. Act, Police Station Sagra, District Varanasi, during pendency of the trial in the court below.

3. FIR of the present case was lodged against the applicant and his father and one unknown person and according to the FIR marriage of the applicant was performed with the deceased on 1.12.2020 and on 16.1.2021 father of the applicant informed the informant that his sister i.e. deceased died.

4. It is further mentioned in the FIR that applicant and his father committed the murder of the sister of the informant due to the demand of dowry and when informant arrived at spot then he found that dead body of his sister has already been disposed off by the applicant and his father.

5. 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 alongwith his father in the present case.

6. He further submitted that actually deceased suffered with covid infection and she died due to covid-19, therefore, after giving information of this fact, her dead body was disposed off.

7. He further submitted that although informant and other witnesses during investigation in their statements recorded under sections 161 Cr.P.C. stated that due to the demand of motorcycle applicant tortured the deceased and committed her murder but when informant of the case appeared before the trial court then he initially in his examination in chief supported the version of the

FIR but subsequently in the cross-examination he did not support the prosecution case and categorically stated that his sister i.e. deceased died due to the covid-19 infection and therefore, on the application moved by the prosecution of the other witnesses have been discharged by the trial court.

8. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 19.10.2021 i.e. for more than two years.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

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

11. Although, from the perusal of the record, it appears that applicant is husband of the deceased and his wife died within a year of her marriage and there is also allegation of demand of dowry but from the FIR, it reflects that there is no specific demand of dowry has been disclosed in the FIR.

12. Further, although during investigation informant and other witnesses supported the version of the FIR and when informant appeared before the trial court then initially in examination in chief he supported the prosecution but in his cross-examination he stated that deceased died due to covid-19 pandemic and thereafter on the basis of the applications all the other witnesses have been discharged.

13. Therefore, under these circumstances defence taken by the applicant cannot be ruled out, at this stage.

14. Further applicant is having no criminal history and he is in jail in the present matter since 19.10.2021 i.e. for more than two years.

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-**Santosh Gupta**, 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 :- 2.11.2023

Ankita