

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47678 of 2023

Applicant :- Nitesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Badan

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Shiv Badan, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA- for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 250 of 2022, under Sections 498-A, 304-B, 3016 IPC 3/4 D.P. Act, Police Station- Tindwari, District- Banda, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 27.06.2023 and he is pressing the instant second bail application on the ground that after rejection of the first bail application of the applicant, when informant and his wife i.e. parents of the deceased appeared before the trial court then they did not support the prosecution case and both have been declared hostile.

4. He further submitted that it is a case in which wife of the applicant died due to hanging and as per the applicant, some dispute arose between husband and wife and thereafter she committed suicide by hanging herself and post-mortem report of the deceased also suggests that she died due to hanging.

5. He further submitted that applicant is not having any criminal history and he is in jail since 25.11.2022 i.e. for more than a year.

6. Per contra, learned AGA however, opposed the prayer for bail but could not dispute the fact that after rejection of the first bail application of the applicant, when informant and his wife i.e. parents of the deceased appeared before the trial court then they did not support the prosecution case and they have been declared hostile and applicant is in jail for more than a year. He further

could not dispute the fact that it is a case in which, deceased died due to hanging.

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

8. This is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court but it appears that after rejection of the first bail application of the applicant, when informant and his wife i.e. parents of the deceased appeared before the trial court then they did not support the prosecution case and they have been declared hostile and their statements have been annexed alongwith the instant bail application.

9. Further, post-mortem report of the deceased suggests that deceased died due to hanging, therefore, defence take by the applicant cannot be completely ruled out at this stage.

10. Further, applicant is not having any criminal history and he is in jail since 25.11.2022 i.e. for more than a year.

11. Therefore, considering the facts and circumstances of the case discussed above, 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- **Nitesh Kumar** 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 :- 14.12.2023

KK Patel