

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49268 of 2023

Applicant :- Irshad Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Pati Tiwari, Arun Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri K.K. Shukla, Advocate filed his power on behalf of the informant, today in the Court, which is taken on record.

2. Heard Sri Rakesh Pati Tiwari, learned counsel for the applicant, Sri K.K. Shukla, learned counsel for the informant and Sri Amar Nath Vishwakarma, learned Brief Holder for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 341 of 2023, under Sections 498A, 302, 34 IPC and Section 3/4 D.P. Act, Police Station Ijjat Nagar, District Bareilly during pendency of the trial.

4. FIR of the present case was lodged against applicant and his family members and according to the FIR marriage of the elder brother of the applicant was performed with the daughter of the informant on 24.05.2015 and after marriage applicant and his family members tortured the daughter of the informant for Maruti Car and for want of dowry they have committed the murder of the daughter of the informant by administering some poisonous substance.

5. Learned counsel for the applicant submitted that on the basis of false allegation, applicant, who is Devar of the deceased, has been made accused in the present matter along with husband and in-laws of the deceased. He further submits that applicant is a young unmarried man aged about 24 years and he was doing private work in the State of Rajasthan and on the date of incident he was not present at his home and he was on his duty at Rajasthan.

6. He further submits that from the perusal of the post mortem report, however, it appears that deceased died due to smothering

and this fact suggests that it is a case of homicidal death but allegation made against the applicant prima facie appears to be false and it appears that after the death of daughter of the informant on the basis of false allegation of demand of dowry, FIR of the present case was lodged. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 10.07.2023.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for and submits that however applicant is brother-in-law of the deceased but it is a case of homicidal death as post mortem report suggests that deceased died due to smothering and applicant failed to explain the homicidal death of his Bhabhi. They further submits that although in paragraph-20 of the affidavit applicant made averment that he was not present in his house at the time of incident and he was in Rajasthan as he was doing private work in State of Rajasthan but except the bald and vague averment, there is no evidence on record in this regard, therefore, considering the fact that deceased was murdered in her matrimonial home and applicant is brother-in-law of the deceased, he should not be released on bail.

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

9. However, applicant is brother-in-law of the deceased and he in paragraph-20 of the affidavit stated that he worked in Rajasthan and on the date of incident he was in Rajasthan but apart from the verbal averment made in paragraph-20 of the affidavit, there is no such evidence on record, which can show that he was in Rajasthan at the time of incident and even during investigation no such fact could be surfaced.

10. Further, from the perusal of the post mortem report of the deceased, it appears that deceased died due to smothering, therefore, it appears to be case of homicidal death and applicant, who is Devar of the deceased, failed to explain the homicidal death of his Bhabhi.

11. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail at this stage.

12. Accordingly, the instant bail application is rejected at this stage.

13. 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 :- 20.11.2023

AK Pandey