

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49628 of 2023

Applicant :- Taaj Mohd.

Opposite Party :- State of U.P.

Counsel for Applicant :- Pankaj Bharti

Counsel for Opposite Party :- G.A.,Amit Daga

Hon'ble Sameer Jain,J.

1. Heard Shri Pankaj Bharti, learned counsel for the applicant, Shri Shatrughan Yadav, learned A.G.A. for the State-respondent and Shri Amit Daga, learned counsel for the informant.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.56 of 2023, under Sections 498-A, 304-B IPC & Section 3/4 D.P. Act, Police Station Kakroli (Kakrauli), District Muzaffar Nagar, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 06.09.2022 against applicant and his family members and according to the F.I.R., marriage of the applicant was performed with the sister of the informant on 07.11.2021 and after solemnization of the marriage, applicant and his family members started torturing her for a four wheeler and on 26.03.2023 at about 05:00 p.m. in the evening applicant and co-accused Riyasat came at the house of the informant and has taken his sister and after administering some poisonous substance dropped her in her paternal home and after sometime when condition of his sister started deteriorating then informant has taken her to the hospital where she was declared dead.

4. Learned counsel for the applicant submits 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 in the present matter alongwith his family members.

5. He further submits that admittedly at the time of death, deceased was residing in her paternal home i.e. in the house of the informant. He further submits that after the death of the deceased, a false story has been cooked up by the informant and story of the prosecution prima-facie appears to be totally false and this fact is evident from the statement of Dr. Amit Kumar, which has been annexed as Annexure No.9 to the affidavit. He next submits that as per the statement of Dr. Amit Kumar, deceased on 26.03.2023 at about 03:00 p.m. came alongwith her husband and from his statement, it also reflects that on 26.03.2023 at about 11:40 p.m. in the night the brothers of the deceased has taken her to his medical centre and therefore his statement completely belies the allegation made in the F.I.R. that applicant and co-accused have taken the deceased on 26.03.2023 at 5:00 p.m.

6. He further submits that if wife consumed something while residing in her paternal home and died in absence of her husband then husband cannot be held liable. He further submits, applicant is poor husband, who also lost his wife.

7. He next submits that applicant is not having any criminal history and he is in jail in the present matter since 17.08.2023.

8. Per contra, learned AGA as well as learned counsel for the informant vehemently opposed the prayer for bail and submits that applicant is husband of the deceased and his wife died under abnormal circumstances within two years of her marriage and there is also allegation of demand of dowry but both the counsels could not dispute the fact that at the time of incident, deceased was residing in her paternal home and statement of Dr. Amit Kumar

contrary to the allegation made by the informant in the F.I.R. and in his statement recorded under Section 161 Cr.P.C. They further could not dispute the fact that there is no evidence on record, which can show that applicant is the person, who administered the poison to the deceased i.e. his wife.

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

10. However, applicant is husband of the deceased and his wife died under abnormal circumstances within two years of her marriage due to consumption of Aluminium Phosphide and there is also allegation of demand of dowry but admitted fact of the case is that deceased was not residing in her matrimonial home and she was residing in her paternal home i.e. in the house of the informant.

11. Further, as per allegation on the date of incident i.e. on 26.03.2023 at about 05:00 p.m. in the evening applicant and co-accused Riyasat arrived at the house of the informant and have taken the deceased and thereafter dropped back the deceased in the house of the informant and after sometimes the condition of the deceased started deteriorating and when she has taken to the hospital then she was declared dead but the story narrated by the informant in the F.I.R. and in his statement recorded under Section 161 Cr.P.C. appears to be contrary to the statement of Dr. Amit Kumar, which has been annexed as Annexure No.9 to the affidavit as according to the doctor, applicant and co-accused came alongwith the deceased at 3:00 p.m. on 26.03.2023, therefore, defence taken by the applicant cannot be completely brushed aside at this stage.

12. Therefore, considering the facts and circumstances of the case,

discussed above, in my view, applicant, who is husband of the deceased, is entitled to be enlarged on bail.

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

14. Let the applicant-**Taaaj Mohd.**, 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.

15. 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.

16. 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 :- 22.11.2023/Zafar