

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52285 of 2023

Applicant :- Rajeev Dwivedi

Opposite Party :- State of U.P.

Counsel for Applicant :- Shailesh Pandey

Counsel for Opposite Party :- G.A., Satya Prakash Shukla

Hon'ble Sameer Jain, J.

1. Shri Satya Prakash Shukla, Advocate submits that yesterday he has filed his power on behalf of the informant in the Office of this Court therefore, his name could not be shown in the cause list.

2. Heard Shri Shailesh Pandey, learned counsel for the applicant, Shri Ajeet Kumar Madheshiya, learned Brief Holder for the State-respondent and Shri Satya Prakash Shukla, learned counsel for the informant.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.79 of 2023, under Section 498-A, 304-B IPC & Sections 3/4 POCSO Act, Police Station Lalganj, District Mirzapur, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 03.04.2023 against applicant and his family members and according to the FIR, marriage of the daughter of the informant was solemnized with the applicant about five and a half years before and after solemnization of the marriage, applicant and his family members tortured her for Rs.2,00,000/- and a motorcycle. It is further mentioned in the FIR that last year applicant and his family members turned out the daughter of the informant from her

matrimonial home but after that she again started living with the applicant and on 03.04.2023, informant received information that his daughter has committed suicide by hanging herself.

5. 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.

6. He further submits that there was absolutely no occasion for the applicant to make demand of dowry after five and a half years of his marriage specially when two children were born with the wedlock of the applicant and the deceased.

7. He further submits that actually after birth of children, deceased started insisting to live separately but as applicant was unable to live separately after leaving her parents, therefore, he could not accept her proposal and only due to this reason, in anger and depression, she committed suicide by hanging herself.

8. He further submits that post-mortem report also suggests that deceased died due to hanging.

9. He further submits that however in the FIR, it is alleged that about a year before applicant and his family members turned out the deceased from her matrimonial home but except bald allegation, there is no other evidence in this regard and in this regard, no complaint was ever lodged by either informant or the deceased and in fact applicant never turned out the deceased from her matrimonial home.

10. He further submits that applicant is not having any previous criminal history and he is in jail in the present matter since 03.04.2023 i.e. for last more than six months.

11. Per contra, learned AGA as well as learned counsel for the

informant opposed the prayer for bail and submit that applicant is husband of the deceased and his wife died within seven years of her marriage in her matrimonial home under abnormal circumstances and there is also allegation of demand of dowry and therefore, considering the provisions of Section 304-B I.P.C. and Section 113- B of the Indian Evidence Act, applicant should not be released on bail.

12. Learned counsel for the informant further pointed out that earlier also applicant and his family members tortured the deceased and they have turned out her from her matrimonial home and this fact is evident from the FIR but he could not dispute fact that in this regard, no complaint was ever lodged by either informant or the deceased.

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

14. However, applicant is husband of the deceased and his wife died within seven years of her marriage in her matrimonial home under abnormal circumstances and there is also allegation of demand of dowry but applicant has come with a specific defence that after birth of both children, deceased started insisting to live separately and when applicant could not fulfil her desire, then in anger and depression, she committed suicide by hanging herself. The defence taken by the applicant cannot be completely ruled out at this stage considering the fact that post-mortem report of the deceased suggests that she died due to hanging.

15. Further, although there is allegation that one year before the death of the deceased, applicant and his family members turned out her from her matrimonial home but except bald allegation,

there is no other evidence in this regard.

16. Further, applicant is not having any previous criminal history and he is in jail in the present matter since 03.04.2023 i.e. for more than six months.

17. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant, who is however husband of the deceased, is entitled to be enlarged on bail.

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

19. Let the applicant- **Rajeev Dwivedi**, 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.

20. 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.

21. 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 :- 6.12.2023
Zafar