

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53407 of 2023

Applicant :- Abhishek

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri S.K. Upadhyay, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 398 of 2022, under Sections 498A, 304B IPC and Section 3/4 D.P. Act, Police Station Modi Nagar, District Ghaziabad during pendency of the trial.

3. FIR of the present case was lodged against applicant and his family members and according to the FIR marriage of the applicant was performed with the daughter of the informant on 09.03.2022 and after marriage applicant and his family members tortured her for motorcycle and money and due to non fulfillment of demand of dowry applicant and his family members committed murder of the daughter of the informant.

4. 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 in the present matter. He further submits that marriage of the applicant was performed with the deceased about four months before, therefore, there was no occasion for him to harass his wife and actually applicant resided along with his parents and one minor brother aged about 13 years in the village and his wife i.e. deceased wanted to live in city and when applicant could not fulfill her desire then within four months of her marriage she committed suicide.

5. He further submits that even post mortem report of the deceased suggests that she died due to hanging. He further submits that at the time of disposal of the bail application of the parents of the applicant, this Court directed the court concerned to make every

endeavor to conclude the trial within a year but since passing the order more than a year has been passed and till date only one prosecution witness could be examined and this fact shows no sincere efforts were made by the trial court to conclude the trial of the case pursuant to the order passed by this Court.

6. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 04.07.2022 i.e. for almost one and half years.

7. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is husband of the deceased and his wife died within four months of her marriage under abnormal circumstances in her matrimonial home and there is also allegation of demand of dowry, therefore, considering the provisions of Section 304B IPC and 113B of Indian Evidence Act, applicant should not be released on bail.

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

9. Applicant is husband of the deceased and his wife died within four months of her marriage due to hanging in her matrimonial home and there is also allegation of demand of dowry but applicant has come with specific defence that as he used to reside in village along with his family members and deceased i.e. his wife did not want to live in village and always insisted to live in city but he could not fulfill her desire, therefore, she committed suicide. Considering the post mortem report of the deceased, which shows that she died due to hanging, the defence taken by the applicant cannot be completely ruled out at this stage.

10. Further, applicant is not having any criminal history and in the present matter he is in jail since 04.07.2022 i.e. for last almost one and half years and in the month of November, 2022 while disposing off the bail application of his parents, this Court directed the trial court to make every endeavor to conclude the trial within a year but since then more than a year has been passed but it appears that till date only one prosecution witness could be examined, therefore, it reflects that trial court failed to comply the direction issued by this Court in its letter and spirit.

11. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant, who is in jail for almost one and half years, 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 - **Abhishek** 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 :- 13.12.2023

AK Pandey