

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51765 of 2023

Applicant :- Jitendra Kumar Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Upendra Upadhyay, Jayant Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Upendra 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. 263 of 2023, under Sections 498A, 304B, 323, 313 IPC and Section 3/4 D.P. Act, Police Station New Agra, District Agra during pendency of the trial.

3. FIR of the present case was lodged against applicant and his parents and according to the FIR marriage of the daughter of the informant was performed with the applicant on 03.05.2022 and after marriage applicant and his parents tortured her for a bullet motorcycle and on 18.06.2023 informant received an information that his daughter, who was pregnant, is admitted in the hospital and when he arrived at hospital then he was informed that due to non fulfillment of demand of dowry, she was badly beaten by the applicant and his parents and they hit her on her abdomen and thereafter they admitted her in the hospital. It is further mentioned in the FIR that on 22.06.2023 during treatment his daughter died.

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 admittedly deceased was pregnant at the time of incident and during pregnancy when her condition started deteriorating then she was admitted in the hospital by the applicant and his parents and in the hospital she delivered a dead child. He further submits that as child was removed from the womb after surgery therefore even after removal of the dead child deceased could not be recovered and ultimately she died.

5. He further submits that post mortem report of the deceased suggests that deceased died due to excessive uterus bleeding. He further submits that when the statement of the doctor, who conducted the post mortem of the deceased, was recorded, which is annexed as Annexure-2 along with instant bail application, then he also stated that during treatment deceased died and post mortem report of the deceased and statement of the doctor, who conducted the post mortem, completely belies the prosecution case and both documents shows that deceased died due to her bad medical condition.

6. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 06.07.2023.

7. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that from perusal of the post mortem report and statement of the doctor, who conducted the post mortem, it appears that deceased died during her pregnancy due to excessive uterus bleeding.

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

9. However, applicant is husband of the deceased and his wife died within one and half years of her marriage in her matrimonial home and there is also allegation of demand of dowry but from perusal of the post mortem report and statement of autopsy surgeon Dr. Radhwa Charya (Annexure-2), it reflects that deceased died during her pregnancy due to excessive uterus bleeding.

10. Further, applicant is not having any criminal history and in the present matter he is in jail since 06.07.2023.

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 - **Jitendra Kumar Sharma** 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 :- 4.12.2023

AK Pandey