

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9479 of 2023

Applicant :- Omprakash Yadav

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Alok Kumar Srivastava

Counsel for Opposite Party :- G.A., Kamal Kishore Tewari

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Alok Kumar Srivastava learned counsel for the accused-applicant, Shri Kamal Kishore Tewari, learned counsel for the informant/complainant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant - **Omprakash Yadav** for grant of bail, in Case Crime No.88 of 2023, under Sections 498-A, 304-B, 315 I.P.C. and 3/4 of the Dowry Prohibition Act, Police Station Atrauli, District Hardoi, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that allegation pertaining to the causing of abortion has not been found corroboration from any medical evidence and death of the deceased as per postmortem report had occurred due to septicemic shock and therefore, the same was the result of poor treatment given in the hospitals and the same may not be imputed to the applicant.

5. It is also submitted that the applicant had attempted to save the life of the deceased and it was he, who had taken the deceased to the hospitals, but unfortunately could not succeed in his attempts to save her life. It is also submitted that the informant of this case is also not opposing the plea of bail of the applicant, thus applicant, who is detained in prison in this case since 14.03.2023, be released on bail.

6. It is next submitted that the applicant is not having any criminal history and the charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise

misuse the liberty.

7. Learned A.G.A. for the State vehemently opposes the prayer of bail of the applicant on the ground that even after knowing well pertaining to the advance stage of pregnancy, the same has either been terminated by administering some noxious medicine, which may be given by the applicant or pregnancy was terminated at the hospital, where the deceased remained hospitalized for a day and in both the conditions the beneficiary was the instant applicant as he was not in favour to keep the child pertaining to whom a suspicion has been shown that he would be mentally retarded, thus having regard to the far reaching social affects of crime, the applicant is not entitled to be released on bail.

8. Shri Kamal Kishore Tewari, learned counsel for the informant/complainant submits that he under instructions is making a statement before this Court that he is not having any objection if the facility of bail is extended to the applicant.

9. Having heard learned counsel for the parties and having perused the record, it is evident that F.I.R. of this case has been lodged by the father of the deceased on 24.02.2023 against the applicant and his sister alleging therein that about 5 years before lodging of the F.I.R., marriage of the deceased was solemnized with the applicant, however, soon before her marriage, she was subjected to cruelty in lieu of demand of Rs.1 lakh and before her death she was pregnant by 7 months and in the ultrasound report, fetus was found differently abled and it is on this account, the deceased has been done to death. During the course of investigation, the investigating officer has recorded statement of Dr. Neha Iqbal, who had treated the deceased while she was admitted in Lucknow Sewa Hospital and she stated that when the patient was admitted in the hospital, she was heavily bleeding, however, she had not administered any medicine for abortion, but she could not say if in the intervening night abortion had taken place. Significantly she further stated that she had asked the applicant about any medicine given to the deceased for the purpose of abortion to which he did not deny. In this regard statement of one prosecution witness namely Kumari Roshani, who is sister of the deceased, is important, wherein she had stated that when the applicant came to know that fetus in the womb of the deceased is differently abled, he wanted to abort the same and was pressurizing the deceased to consume medicines for abortion and her parents had informed the applicant that by administering medicine for abortion, life of the deceased would be in danger but even then the applicant had given some medicine to the deceased for the purpose of abortion. In this

regard death certificate issued by the King George's Medical University, Lucknow, a copy of which has been placed at page 40, is also important, wherein antecedent cause of death has been explained as under:

"(b) (Due to/or as a consequences of) P2+0 (L1) DAY 1 PNC WITH HISTORY OF POST PARTUM HEMORRAGE (PPH) WITH VERY SEVERE ANEMIA IN SHOCK IN LOW GC."

10. Thus the observation made in the death certificate issued by the King George's Medical University, Lucknow would not leave any doubt that the death of the deceased is directly associated with the illegal abortion. This Court is restraining itself from further appreciating the other circumstances available against the applicant on record, which, in the considered opinion of this Court, may cause an adverse affect on the discretion of the trial court in appreciation of evidence. Thus suffice is to say that the manner in which an innocent lady has been subjected to illegal abortion and her only fault was of carrying a differently abled child, is sufficient enough to persuade this Court not to exercise discretion in favour of the applicant even when the informant has consented to release the applicant on bail as it is the duty of the Court to also consider the impact, which a crime may leave on the society and also to consider the social impact, which an order or judgement of the court may have.

11. Thus having regard to all the facts and circumstances of the case and the evidence available on record against the applicant, I do not find any good ground to release the applicant on bail. Thus the bail application moved on behalf of applicant - **Omprakash Yadav** is hereby **rejected**.

12. The trial court is directed to proceed with the trial and make all out efforts to conclude the same within six months from production of a certified copy of this order and if the trial is not concluded within the period stipulated herein before, the applicant may renew his prayer for bail before this Court.

13. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

14. Office is directed to immediately send a copy of the instant order to the trial court concerned for compliance.

Order Date :- 16.10.2023

Anupam S/-