

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45905 of 2023

Applicant :- Aladeen Ahmad Alias Chhotu

Opposite Party :- State of U.P.

Counsel for Applicant :- Irfan Ahmad Malik, Devesh Kumar Shukla, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Devesh Kumar Shukla, learned counsel for the applicant and Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Aladeen Ahmad Alias Chhotu**, seeking enlargement on bail during trial in connection with Case Crime No. 217 of 2023, under Sections 366, 376-A, 302, 120-B I.P.C., Police Station Bindki,, District Fatehpur.

3. The first information report of the present matter was lodged on 23.06.2023 under Section 366 I.P.C. by Rakesh against unknown person alleging therein that on 22.06.2023 about about 11 p.m. he with his family had gone to attend marriage from where his daughter aged about 19 years went away without telling anyone. He has suspicion that someone has enticed away his daughter for marriage. A report be lodged and appropriate action be taken.

4. Learned counsel for the applicant argued that the applicant is not named in the first information report. It is argued that subsequently in the statement of first informant recorded under Section 161 Cr.P.C. he has stated that he has suspicion on Sonu @ Sikander Ahmad as his daughter used to talk to him on mobile. It is argued that on 23.06.2023 the girl was found around 500 meters away from the said marriage venue in an injured condition. The police then took the CDR of the girl and a suspected person Sikander from which it transpired that a last call on 22.06.2023 at about 22.25 hours was made between them. It is argued that the victim then died on 26.06.2023. Learned counsel has argued that subsequently co-accused Sonu @ Sikander Ahmad was arrested by the police on 25.06.2023 on an information given by police informer on which he gave his confessional statement to the police and stated that he took away the victim girl from the place of marriage to a lonely building where he tried to establish physical relationship with her which was refused by her, he then enraged her modesty, when she resisted to it and became angry he assaulted her, committed rape upon her and then assaulted her with bricks on her head.

5. Learned counsel for the applicant argued that subsequently on 29.06.2023 Somwati the mother of the victim / deceased was interrogated under Section 161 Cr.P.C. who for the first time takes the name of the applicant in the present matter and states of him also supporting the co-accused Sonu @ Sikander Ahmad with regards to his talking with girl. She then casts suspicion on the applicant and Islam Ahmad to be involved in the present matter. It is argued that the other witnesses namely Ram Khelawan Saini, Ram Kishore, Smt. Murat, Radhey Shyam, Smt. Chanda, Kallu Saini, Ramdev Saini, Shivswaroop Saini have stated of identical versions as of Smt. Somwati. It is argued that one Babloo Saini was also interrogated under Section 161 Cr.P.C. who although states of name of the applicant but his statement is on the basis of news and information given to him by Smt. Somwati the mother of the deceased. It is argued that there is no credible evidence against the applicant. It is argued that there is no recovery of any incriminating material either from the possession or on the pointing out of the applicant. While placing paragraph 22 of the affidavit it is argued that the mobile phone of the deceased has been recovered by the police on the pointing out of Sonu @ Sikander Ahmad. It is argued that the implication of the applicant is on the basis of suspicion as even there is no positive and credible evidence with regards to conspiracy and meeting of minds between the accused persons to commit the aforesaid offence. It is argued that charge-sheet in the matter has been submitted and as such there are no chances of the applicant tampering with the evidence or threatening the witnesses. The applicant has no criminal history as stated in para 34 of the affidavit and is in jail since 04.07.2023.

6. *Per contra*, learned counsel for the State opposed the prayer for bail and argued that mother of the victim and other witnesses have stated of applicant conspiring with other accused persons in the present matter. It is argued that as such the applicant is involved in the present matter.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is not named in the first information report. His implication in the present matter has surfaced on the basis of suspicion for the first time in the statement of the mother of the deceased. Co-accused Sonu @ Sikander Ahmad has given his confessional statement to the police. There is no recovery of any incriminating material either from the possession or on the pointing out of the applicant. The involvement of the applicant is on the basis of suspicion.

The case of the applicant is distinguishable with that of co-accused Sonu @ Sikander Ahmad.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant- **Aladeen Ahmad Alias Chhotu**, be released on bail in the

aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is **allowed**.

Order Date :- 31.10.2023

AS Rathore

(Samit Gopal,J.)