

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44860 of 2023

Applicant :- Akhlesh Alias Avlesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Nagendra Kumar Singh

Counsel for Opposite Party :- G.A.,Mahendra Singh

Hon'ble Rajeev Misra,J.

1. Heard Mr. Nagendra Kumar Singh, the learned counsel for applicant, the learned A.G.A. for State and Mr. Mahendra Singh, the learned counsel representing first informant/opposite party-2. .

2. Perused the record.

3. Instant application for bail has been filed by applicant-Akhlesh Alias Avlesh seeking his enlargement on bail in Case Crime No. 259 of 2023 under Sections 306, 498A, 201 I.P.C., Police Station-Junawai, District-Sambhal, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 17.07.2023, a delayed F.I.R. dated 21.07.2023 was lodged by first informant Uday Veer Singh and was registered as Case Crime No. 259 of 2023 under Sections 498A, 306, 201 I.P.C., Police Station-Junawai, District-Sambhal,. In the aforesaid F.I.R. four persons namely Niresh, Kalyan, Villu and Akhlesh (Applicant herein) have been nominated as named accused.

5. At the very outset, the learned counsel for applicant contends that named co-accused Villu @ Rajnesh has already been enlarged on bail by this Court vide order dated 19.10.2023 passed in Criminal Misc. Bail Application No. 44718 of 2023 (Villu @

Rajnesh Vs. State of U.P.). For ready reference, the order dated 19.10.2023 is reproduced herein-under:

"1. Mahendra Singh, Advocate filed his power on behalf of the informant, today in the Court, which is taken on record.

2. Heard Sri Nagendra Kumar Singh, learned counsel for the applicant, Sri Mahendra Singh, learned counsel for the informant and Sri Ravi Kant Kushwaha, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 259 of 2023, under Sections 306, 498A, 201 IPC, Police Station Junawai, District Sambhal during pendency of the trial.

4. FIR of the present case was lodged against applicant and his family members including his brother i.e. husband of the deceased and according to the FIR brother of the applicant performed court marriage with the daughter of the informant in the year 2015 and on 17.07.2023 informant received an information that his daughter died under suspicious circumstance and applicant and his family members has taken her dead body for cremation and on this information when informant arrived at cremation spot then found that cremation of the body of his daughter has been done.

5. It is further mentioned in the FIR that as his daughter performed court marriage with the brother of the applicant, therefore, she was harassed by the applicant and his family members and due to their harassment she committed suicide. It is further mentioned in the FIR that without informing the informant her dead body has been disposed off.

6. Learned counsel for the applicant submitted that applicant is Devar of the deceased and he was having no concerned with the family affairs of the deceased and actually deceased committed suicide as some dispute arose between husband and wife and after her death informant was duly informed and in the presence of the informant the cremation was done but after four days a false story has been cooked up and applicant has been roped in the present matter along with his family members. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 15.08.2023.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that although applicant is Devar of the deceased but without informing the informant, the dead body of the daughter of the informant has been disposed off by the applicant and other accused persons and this fact clearly suggests that due to the abatement of the applicant and others, deceased committed suicide.

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

9. Although, from the record, it reflects that the dead body of the deceased has been disposed off and thereafter FIR of the present case was lodged but as per argument advanced by learned counsel for the applicant that at the time of cremation informant was present and after four days he cooked up a false story, the ground taken by the applicant cannot be completely brushed aside at this stage.

10. Further, even as per prosecution it is a case of suicide and there is no evidence on record, which can show that due to the abatement of the applicant deceased committed suicide and on the basis of general allegation applicant has been made accused in the present matter. Further, applicant is not having any criminal history and in the present matter he is in jail since 15.08.2023.

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 - Villu @ Rajnesh 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 :- 19.10.2023 "

6. On the above premise, the learned counsel for applicant contends that the case of present applicant is similar and identical to that of bailed out co-accused Villu @ Rajnesh. He also contends that there is no such distinguishing feature on the basis of

which case of present applicant can be so distinguished from the aforesaid bailed out co-accused so as to deny him bail. On the above premise, the learned counsel for applicant contends that in view of above and for the facts and reasons recorded in the order dated 19.10.2023 of co-accused **Villu @ Rajnesh** applicant is also liable to be enlarged on bail on the ground of parity. It is then contended that applicant is the mother-in-law of the deceased therefore, she is entitled to the benefit of the provisions contained in proviso to section 437 Cr.p.C

7. Even otherwise, applicant is a woman of clean antecedents inasmuch as she has no criminal history to her credit except the present one. Applicant is in custody since 15.08.2023. As such, she has undergone more than two months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. However, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He therefore contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial.

8. Per contra, the learned A.G.A. has opposed the prayer for bail. However, he could not dislodge the factual and legal submissions urged by learned counsel for applicant with reference to record at this stage.

9. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well

as complicity of applicant coupled with the fact that similarly situate and circumstanced co-accused Villu @ Rajnesh has already been enlarged on bail by this Court, the learned A.G.A. could not distinguish the case of present applicant from that of bailed out co-accused so as to deny him bail, no such incriminating circumstance could be pointed out by learned the A.G.A. necessitating the custodial arrest of applicant during the pendency of trial, the applicant being a lady therefore she is entitled to the benefit of the provisions contained in proviso to section 437 Cr.P.C. the clean antecedents of applicant, the period of incarceration undergone, The police report in terms of Section 173 (2) Cr.P.C. has already been submitted therefore the entire evidence sought to be relied upon by the prosecution against applicant stand crystallised, in spite of above, the learned AG.A. could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, therefore irrespective of the objections raised by the learned A.G.A. in opposition to present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

10. Accordingly, present application for bail is **allowed**.

11. Let the applicant-**Akhlesh Alias Avlesh** involved in aforesaid case crime number be released on bail on her 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) Applicant will not tamper with prosecution evidence.

(ii) 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) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

12. 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 of applicant and send her to prison

Order Date :- 26.10.2023

YK