

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48882 of 2023

Applicant :- Chhotelal And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Sharad Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Sharad Kumar Srivastava, learned counsel for the applicants and Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicants-Chhotelal and Man Singh @ Mannu Lal, seeking enlargement on bail during trial in connection with Case Crime No. 236 of 2022, under section 328, 304 I.P.C., Police Station Lalauli, District Fatehpur.
4. The FIR of the present case was lodged on 14.09.2022 by Suraj Kali against the applicants on the basis of an application moved under section 156(3) Cr.P.C. with the allegation that on 17.05.2022 there was marriage of her niece in her family and her husband Ramu Nishad was getting ready to go to the bank on 18.05.2022 in the morning to withdraw the money from the bank on which the accused persons came there and asked him to accompany them on which he went with them but he did not return since long. After which, in the evening a search was done and he was found lying near the motorcycle agency in an unconscious stage. He was taken to the hospital from where he was referred to Ramsanehi Memorial Hospital Fatehpur. The doctor stated that he has consumed some poisonous substance. After being admitted in ICU and giving treatment he was again referred to Hallet Hospital Kanpur where on 26.05.2022 at 8.00 P.M. her husband died. On the date of incident, her husband had withdrawn Rs. 8000/- from the ATM which was also not found.

5. Learned counsel for the applicants argued that the applicants have been falsely implicated in the present case. It is argued that there was no reason and occasion for the deceased to accompany the applicants as he was going to the bank for taking money for the marriage in the house. It is argued that after recovery of dead body the inquest and other proceedings had taken place but no complaint whatsoever was made by the complainant regarding the involvement of the applicants in the present case. It was subsequently on 27.06.2022 which is after about one month and ten days an application under section 156(3) Cr.P.C. was moved by the wife of the deceased against the applicants on the basis of which the present F.I.R. was lodged. It is argued that the applicants have no motive to commit the aforesaid offence as there was no recovery of any incriminating material either from the possession or pointing out of the applicants. There is no eye witness to the incident. It is argued that the applicants are not having any criminal history as stated in para 26 of the affidavit. The applicants are in jail since 16.07.2023.

6. Per contra learned counsel for the State has vehemently opposed the prayer for bail.

7. After hearing the counsel for the parties and perusing the record, it is evident that the application under section 156(3) Cr.P.C. was moved after one month and 10 days of the death of the deceased. The applicants have no motive to commit the aforesaid offence. There is no eye witness to the incident. There is no credible evidence against the applicant.

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 applicants-**Chhotelal and Man Singh @ Mannu Lal**, 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 applicants will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicants 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 applicants shall file an undertaking to the effect that they 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 applicants will not misuse the liberty of bail in any manner whatsoever. In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under section 82 Cr.P.C., may be issued and if applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under section 174-A I.P.C.

(v) The applicants 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 applicants 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 them in accordance with law and the trial court may proceed against them 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 applicants.

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 applicants to prison.

11. The bail application is allowed.

Order Date :- 17.11.2023

K.K. Maurya

(Samit Gopal,J.)