

Ashish Tiwari @ Chhotu vs State Of U.P. And 3 Others on 4 February, 2025

Author: Raj Beer Singh

Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15023

Reserved

Court No. - 73

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29782 of 2024

Applicant :- Ashish Tiwari @ Chhotu

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Anurag Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. The present second bail application has been filed on behalf of the applicant in Case Crime No. 920 of 2020, under Section 364, 302, 201, 376, 404, 411 IPC, Section 5/6 of POCSO Act and Section 3(2)(5) of SC/ST Act, police station Auraiya, District Auraiya with the prayer to enlarge the applicant on bail. The first bail application of applicant was rejected by this Court on merits vide order dated 29.01.2024, which is reproduced herein below:-

"1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.

2. The present bail application has been filed by the applicant in case crime No. 920/2020, under Section 364, 302, 201, 376, 404, 411 IPC, Section 5/6 of POCSO Act and Section 3(2)(5) of SC/ST Act, police station Auraiya, District Auraiya with the prayer to enlarge the applicant on bail.

3. It has been argued by learned counsel for the applicant that the applicant-accused is innocent and he has been falsely implicated in this case. Applicant is not named in the first information report. The informant has lodged the first information report on 14.11.2020, alleging that his seven years old girl is missing since 13.11.2020 and later on her dead body was recovered on 18.11.2020. Learned counsel submitted that there is no eye witness of alleged incident and that no witness has named the applicant. After about one year, the applicant was arrested in a case crime no. 938/2021, u/s 376, 506 IPC and as per prosecution version, applicant has confessed his involvement in the present case. Alleged recovery of 'Hai' (loket) of deceased was shown from the applicant but the same is wholly false and there is no independent witness of alleged recovery. Except the alleged recovery, there is no other evidence against the applicant. Learned counsel submitted that there is no credible evidence against the applicant and that he is in judicial custody since 03.01.2022 and that in case, applicant is enlarged on bail, the applicant will not misuse the liberty of bail.

4. On the other hand, learned A.G.A. has opposed the prayer for bail and argued that the case relates to rape and murder of a 7 years old girl, who was brutally murdered. Applicant has admitted his involvement in the incident and that there is criminal history of one rape case against the applicant and that DNA report is yet to be received. Recovery of 'Hai' (loket) of deceased was made from the applicant.

5. After considering submissions of learned counsel for the parties, nature of accusations and all attending facts and circumstances of the case, no case for grant of bail is made out.

6. Accordingly, the instant bail application filed on behalf of applicant Ashish Tiwari @ Chhotu is rejected.

7. However, keeping in view the period of detention of the applicant, the Trial Court is directed to expedite the trial and to decide the same expeditiously, preferably within a period of one year from the date of production of copy of the order.

8. A copy of this order be forwarded to the concerned trial court for necessary compliance."

3. It has been argued by the learned counsel for the applicant that applicant is innocent and he has been falsely implicated in this case merely on the basis of suspicion. There is no eye witness of alleged incident. After one year of the incident, applicant was arrested in case crime no. 938 of 2021, u/s 376, 506 IPC and involvement of applicant in this case was shown on the basis of his confessional statement made before the police, which is not admissible in evidence. Except recovery of one 'Hai' (loket) allegedly belongs to the deceased, there is absolutely no evidence against the applicant. It was pointed out that after rejection of first bail application of applicant, statements of informant PW-1 Govind Babu and another witness PW-2 Amit Kumar have been recorded before the trial court. Those witnesses have not made any incriminating statement against the applicant. It was submitted that PW-2 Amit Kumar, who is witness of recovery of alleged 'Hai' (loket), has stated that said 'Hai' (loket) was brought by the police and that he has not gone inside the house of applicant accused and that applicant has not got recovered any such loket in his presence. It was further submitted that in view of the statements of PW-1 and PW-2, recovery of alleged loket becomes doubtful and except that there is no evidence against the applicant. Criminal history of one case shown against the applicant has duly been explained. It was stated that applicant is in jail since 03.01.2022 and thus, he has already undergone the detention of more than three years. Lastly, it was submitted that in case applicant is enlarged on bail, he will not misuse the liberty of bail.

4. Learned A.G.A. has opposed the prayer for bail and argued that the first bail application of applicant has already been rejected by this Court on merits. It was submitted that recovery of one 'Hai' (loket) of deceased was made at the instance of applicant accused.

5. I have considered the submissions and perused the record.

6. Perusal of record shows that applicant is not named in the first information report and his involvement has been shown in this case after one year of the incident on the basis of his confessional statement made before the police. Later on recovery of alleged 'Hai' (loket) was also shown from the applicant. Though the incident is quite heinous as a seven years old girl was molested and murdered but in view of the nature of evidence shown against the applicant, as well as period of detention and all attending facts and circumstances of the case, without expressing any opinion on the merits, a case for bail is made out. Hence, the present second bail application is hereby allowed.

7. Let the applicant Ashish Tiwari @ Chhotu involved in the aforesaid crime be released on bail on furnishing a personal bond and two local sureties each of the like amount to the satisfaction of court concerned subject to the following conditions:

- i. The applicant shall not tamper with the evidence during trial.
- ii. The applicant shall not pressurize/intimidate the prosecution witnesses.
- iii. The applicant shall appear before the trial court on the date fixed, unless personal presence is exempted.

iv. The applicant shall not try to contact, threat or otherwise influence the informant or any of the witness of the case.

8. In case of breach of any of the above condition, the court concerned shall be at liberty to cancel the bail of applicant in accordance with law.

Order Date :- 4.2.2025 Anand