

Court No. - 85

Case :- CRIMINAL APPEAL No. - 185 of 2021

Appellant :- Vijendra Singh @ Gappu

Respondent :- State Of U.P. And Another

Counsel for Appellant :- Jyoti Bhushan, Deena Nath, Deepak Kumar, Ramakant Singh

Counsel for Respondent :- G.A., Janardan Yadav, Satyaveer Singh

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, learned AGA for the State, Sri Satyaveer Singh along with Ms. Prachi Gaud, learned counsel for the informant and perused the material placed on record.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to set aside the impugned order dated 13.10.2020 whereby the Special Judge, SC/ST Act/Additional Sessions Judge, Azamgarh has rejected the bail application of the appellant moved by him in Case Crime No. 127 of 2020, under Sections 302, 504, 506, 34 IPC and Section 3(2)V, 3(1)d, 3(1)dha of SC/ST Act, Police Station Tarwan, District Azamgarh.

The case of the prosecution as per the FIR is that on 14.08.2020 at around 5.00 pm appellant with other co-accused has taken away the husband of the informant namely Satyamev Jayate and fired with firearm weapon 4 to 5 times over his head as a result of which he died on the spot. The appellant addressed the informant with caste related words and has also threatened her.

Learned counsel for the appellants has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that appellant is a handicapped person having 60% permanent disability and a certificate issued by the C.M.O. concerned is brought on record. It is also submitted that as per the post mortem report the death of the deceased occurred about one day before, therefore, the occurrence as alleged did not take place at 5.00 pm. It is also submitted that injuries as noted on the body of the deceased indicate three dimensions which reflects that in the postmortem report only three weapons were used out of which two country made pistols have been recovered from the other co-accused. No incriminating article is recovered either on the

pointing or out of possession of the present appellant. Appellant is implicated in a case under Gangster Act after the present incident. It is also submitted that there is no eye witness of the occurrence while as per the site plan a college is situated near the place of occurrence. It is submitted the incident took place at around 7.00-8.00 pm because such time corroborated the version of the postmortem report. It is also submitted that dead body of the deceased was found in the field of the appellant. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellant is languishing in jail since 20.08.2020. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. assisted by learned counsel for the informant has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant and argued that bail application of co-accused Waseem has been rejected by this Court in which entire material available on record was properly discussed. Appellant is named in the FIR. The appellant is able to drive motorcycle. The witnesses of fact have already been recorded and the trial is in its logical end. It is also submitted that the deceased sustained as much as nine firearm injuries. Appellant is not entitled to be released on bail.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has properly considered the case of the appellant. Hence, in view of above consideration, the order of rejection of bail passed by the trial court dated 13.10.2020 is affirmed.

Having considered the submissions of the parties noted above, finding no force in the submissions made by the learned counsel for the appellant; without expressing any opinion on the merits of the case, the Court is of the opinion that the appellant is not entitled to be enlarged on bail and the appeal deserves to be dismissed.

The criminal appeal is dismissed.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent

conclusions on the basis of evidence led unaffected by anything said in this order.

Order Date :- 26.10.2023
Mohit