

Neutral Citation No. - 2023:AHC:235647

Reserved on 05.12.2023

Delivered on 12.12.2023

Case :- CRIMINAL APPEAL No. - 1282 of 2023

Appellant :- Gaurav Tyagi

Respondent :- State of U.P. and Another

Counsel for Appellant :- Anurag Yadav,Deepak Sharma,Mahendra
Pratap,Vinod Singh

Counsel for Respondent :- G.A.,Ram Raj Pandey

Hon'ble Siddharth,J.

Heard Sri Vinod Singh, learned counsel for the applicant; learned AGA for the State 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 12.01.2023 whereby the Additional Sessions Judge / Special Judge, SC/ST Act, Baghpat in Criminal Bail Application No. 206 of 2022, has rejected the bail application of the appellant moved by him in Case Crime No. 223 of 2022, under Sections 323, 504, 302, 201 IPC and Section 3(2) V of SC/ST Act, Police Station- Chandi Nagar, District Baghpat.

Criminal appeal has been placed before this court by way of nomination by Hon'ble the Chief Justice since Criminal Appeal no. 2489 of 2023 of co-accused, Satish @ Leelu and another was rejected by this court vide order dated 16.05.2023, which is quoted below :-

" Heard Sri Anil Kumar Mishr, learned counsel for the appellant Shri Ram Raj Pandey, learned counsel for the opposite party no. 02 and the learned A.G.A. for the State.

2. 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 13.02.2023 whereby the Special Judge, SC/ST Act, Baghpat in Criminal Bail Application No. 14 of 2023, has rejected the bail application of the appellant moved by him in Case Crime No. 223 of 2022, under Sections 323, 504, 302, 201, 120B IPC and Section 3(2) V of SC/ST Act, Police Station- Chandi Nagar, District Baghpat.

3. There is allegation in the FIR that the appellant and co-accused, Sateyendra @ Pappu, came to the house of the informant and informed him that there is a work available in dairy @ of Rs.10,000/- per month and they will get his son employed. On the next day on 29.07.2022 without informing the informant, the son of the informant, Tejveer @ Jhonny, was send by the appellant and the co-accused, Sateyendra to the house of Bittu, to his relative, co-accused, Gaurav and Bittu. When the informant went to the house of the appellant and co-accused, Sateyendra, and asked about whereabouts of his son, they informed that they have send him to work on dairy. When the informant asked him why without his permission he has send them, they beated him and abused him by caste related words. When he went to meet his son, the co-accused, Gaurav and Ravindra, informed that their son had stolen mobile phone on 4/5.08.2022 and had ran away. On 06.09.2022, they came to know that a dead body has been recovered in the drain and the informant and his brother went and identified the dead body from the photographs and the clothes of their son.

4. Learned counsel for the appellant has submitted that the role of the appellant is only of sending the son of informant to co-accused, Gaurav and Bittu. Co-accused, Bittu, has already been enlarged on bail. The order of the court below is not justified and deserved to be quashed. The appellant is languishing in jail since. 12.01.2023.

5. Learned AGA has vehemently opposed the prayer for the bail of the appellant and submitted that there is clear role of conspiracy assigned to the appellant since he instigated the deceased to go to co-accused, Gaurav and Bittu, without information of his father and there the son of the informant was murdered by the co-accused, Gaurav, in conspiracy with the appellant. In the confessional statement of co-accused, Gaurav, that only role assigned to Bittu, is of helping him in disposed of dead body of deceased will not benefit appellant. He has submitted that the appellant does not deserves to be enlarged on bail.

6. This Court after hearing the learned counsels for the parties does not finds any ground for enlarging the applicant on bail at this stage.

7. The criminal appeal is accordingly, dismissed. The order of the court below is affirmed.

8. The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferable within a period of one year from the date of production of certified copy of this order. “

Criminal appeal no. 1073 of 2023 of co-accused, Bittu @ Pradeep was allowed by this court vide order dated 28.04.2023, which is quoted below :-

“ Heard Sri Rahul Singh Tomar, learned counsel for the appellant; learned A.G.A for opposite party no.1; Sri Ram Raj Pandey, learned counsel for opposite party no. 2 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 12.01.2023 whereby the Special Judge, SC/ST Act, Baghpat has rejected the bail application of the appellant moved by him in Case Crime No. 223 of 2022, under Sections 323, 504, 302, 201 IPC and Section 3(2)5 of SC/ ST Act (Prevention of Atrocities) Act, Police Station- Chandi Nagar, District- Baghpat.

There is allegation in the FIR regarding commission of offence of murder, threatening, beating and causing disappearance of dead body of the deceased belonging to schedule caste. Learned counsel for the appellant has submitted that co-accused, Gaurav, has confessed causing the murder of the deceased. The only role assigned to the appellant is that he assisted the main accused, Gaurav, in getting the dead body of the deceased disposed of. He has submitted that the role of appellant is different from co-accused, Gaurav. The appellant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 18.09.2022. It is a case of malicious prosecution under the provisions of SC/ST Act. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant and submits that the allegations involved are very serious in nature. But he could not point out any material to the contrary. He further submits that in case the appellant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the Court below has not properly considered the facts of the case. Hence, in view of above consideration, the order of rejection of bail passed by the court below dated 12.01.2023 is, hereby, set aside.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; keeping in view uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, court is of the opinion that the appellant is entitled to be enlarged on bail. Let appellant, Bittu @ Pradeep, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) The appellant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

(ii) The appellant shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellant 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 in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the appellant, 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. The criminal appeal is allowed. ”

Learned counsel for the appellant has argued that first information report in this case was delayed hence appellant is entitled to bail. Reliance has been placed on the judgement of the Apex Court in the case of Harilal etc. Vs. State of Madhya Pradesh, passed in Criminal Appeal No.2216-2017 of 2011.

In present case this court finds that deceased went missing on 12.08.2022 and missing report was lodged on the same day. First information report has been lodged belatedly on 17.09.2022. The same was lodged only after evidence was collected against accused persons. Therefore, the delay in lodging the first information report will not prove fatal for the prosecution case.

This court after going through the material on record finds that appellant has been assigned main role of causing of the alleged offence of murder of one person and causing disappearance of his dead body. Incriminating recovery has been made on the pointing of appellant. He has also criminal history to his credit. Role of appellant is different from co-accused, Bittu @ Pradeep, who has been granted bail by this court. He allegedly only assisted the appellant in commission of alleged crime.

After hearing rival contentions of the parties, it is not a fit case for enlarging the appellant on bail.

The criminal appeal is accordingly dismissed. The order of the court below is affirmed.

The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferable within a period of one year from the date of production of certified copy of this order as per section 309 cr.p.c.

Order Date :-12.12.2023

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