

Court No. - 85

Case :- CRIMINAL APPEAL No. - 2802 of 2021

Appellant :- Tushar Tyagi @ Golu

Respondent :- State Of U.P And Another

Counsel for Appellant :- Ramesh Kumar Pandey,Adesh Kumar,Ainul Haq,Gulshajar,Rakesh Kumar Maurya

Counsel for Respondent :- Ajay Kumar Mishra

Hon'ble Mayank Kumar Jain,J.

1. Heard learned counsel for the appellant, learned Additional Government Advocate for the State of U.P. and perused the record.

2. This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellants with the prayer to set aside the bail rejection order dated 19.05.2023/31.05.2021 passed by learned Special Judge (SC/ST Act), Allahabad in Bail Application No. 1935 of 2021, arising out of Case Crime No. 351 of 2020, under Sections 302, 201 I.P.C., Section 3(2)(5) of SC/ST Act, Police Station Parikshitgarh, District Meerut.

3. Case of the prosecution as per the F.I.R is that on 28.10.2020 at about 6:15 a.m., when the informant did not find his father on his bed, he asked with his younger brothers, namely, Aman & Vijay about their father and they told him that the appellant had taken away their father on the last night at 12:30 a.m., thereafter, one Shahjad came and enquired about their father. The informant told him that his father was accompanied by the present appellant, Tushar Tyagi @ Golu in the field of Jitendra and when the informant went in the field of Jitendra, he found dead body of his father in his field.

4. Learned counsel for appellant has submitted that the appellant is innocent and has been falsely implicated in this case. It is further submitted that the first information report was initially lodged against the present appellant but thereafter father of the appellant was also implicated in this case, who has been granted bail by the coordinate Bench of this Court vide order dated 12.08.2021 in Criminal Appeal No.1811 of 2021. It is also submitted that wife of the deceased gave an application and her statement before Labour Enforcement Officer that her husband, Rampal died on 28.10.2020

due to fever. This application was also submitted before the trial court but it has been rejected by the court concerned. It is further submitted that only the statement of P.W.-1, Sandeep has been recorded before the trial court. It is next submitted that criminal history of the appellant has been explained in paragraph 14 of the rejoinder affidavit. It is also submitted that the appellant is languishing in jail since 29.10.2020 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the early disposal of the case.

5. Per contra, learned A.G.A. and learned counsel for the informant have vehemently opposed the prayer for bail and submitted that during trial, the informant in his statement under Section 161 Cr.P.C. has corroborated the version of the prosecution and had specifically stated that he came to know that present appellant took his father to his field for consuming liquor and thereafter, the appellant committed murder by strangulating him. It is next submitted that in the post mortem report, hyoid bone was found to be fractured. It is next submitted that there are two witnesses of last seen, namely, Aman and Vijay, who had stated that they had seen the appellant in the company of the Rampal before his death. It is also submitted that in the post mortem report, the cause of death was ascertained by strangulating the deceased.

6. Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the active participation of the appellant in the commission of crime, I do not find it fit case for bail.

7. Since the trial court has passed the impugned order after appreciating the evidence available on record, there is no occasion to interfere with the finding of fact recorded by the trial court, hence, the present criminal appeal lacks merit and deserves to be dismissed.

8. Accordingly, the criminal appeal is **dismissed**.

Order Date :- 18.10.2023

Shivangi