

Court No. - 85

Case :- CRIMINAL APPEAL No. - 6156 of 2023

Appellant :- Brijendra Kumar Kashyap

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ram Badan Maurya

Counsel for Respondent :- G.A., Agnivesh, Jadu Nandan Yadav

Hon'ble Mayank Kumar Jain, J.

Counter affidavit filed by learned counsel for the informant/opposite party no.2 is taken on record.

Heard learned counsel for the appellant, Sri Jadu Nandan Yadav, learned counsel for the informant/opposite party no.2, learned Additional Government Advocate for the State of U.P. and perused the record.

This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant with the prayer to set aside the bail rejection order dated 05.05.2023 passed by learned Special Judge (SC/ST Act), Kannauj in Bail Application No. 893 of 2023, arising out of Case Crime No. 605 of 2022, under Sections 364, 302, 201, 34 IPC and Sections 3 (2) (V) of SC/ST Act, Police Station Chhibramau, District Kannauj.

As per prosecution version, on 12.10.2022 at around 3 pm, the husband of the informant namely Rahul had gone with the appellant and other accused persons by his Bolero Car bearing No. UP77M9555 to attend a birthday party. On the very same day at around 7 pm, he informed her through mobile phone that he was with named accused Vijendra kumar and another persons and they were going to Samshabad to attend a party and he would return by 10 pm. The husband of the informant did not return. She made serious efforts to search him but his whereabouts could not be traced out.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case merely on the basis of suspicion. On 15.10.2022, Sunil Kumar, brother of the informant given an application to the S.H.O. PS. Shamshabad stating therein that the dead body of his brother-in-law (jija) was found at Dhai Ghat bridge at river Ganga and necessary action

may be taken. It is further submitted that except the statement of informant there is no other evidence against the appellant. It is further submitted that there is no last seen evidence against the appellant. It is further submitted that no recovery either on the pointing out of the appellant or from his possession is made out. It is further submitted that no motive has been assigned to the appellant. It is further submitted that similarly placed co-accused Adesh Kasyap has already been granted bail by this Court vide order dated 11.10.2023 passed in Criminal Appeal No. 9680 of 2023. The appellant does not have any criminal history to his credit. Lastly, it is submitted by learned counsel for the appellant that there is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant is languishing in jail since 15.10.2022 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.

Per contra, learned A.G.A. assisted by learned counsel for the informant opposed the prayer for bail by contending that from the last conversations in between deceased and informant, it is clear that appellant was in the company of appellant and other accused persons and the said conversations is to be considered as dying declaration. It is further contended that as per the post-mortem report of the deceased, six injuries were noted by the doctor. Apart from it, appellant has one case criminal history under the Gangster Act and therefore, the case of the appellant stands on different footing to the co-accused Adesh Kashyap who has already been granted bail.

In rebuttal, learned counsel for the appellant submits that after the aforesaid case, the appellant has falsely been implicated in the case registered under the Gangster Act.

Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, this Court is of the view that the appellant has made out a case for bail. The Court below erred in rejecting the bail application. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

Accordingly, the appeal is allowed and the impugned order rejecting the bail application of the appellant is set-aside.

Let the appellant, namely, **Brijendra Kumar Kashyap** involved

in the above Case be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/intimidate the prosecution witness.

(iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) 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.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 17.11.2023/AKT