

Neutral Citation No. - 2023:AHC:235588

Reserved On:- 24.11.2023

Delivered On:- 12.12.2023

Case :- CRIMINAL APPEAL No. - 6314 of 2023

Appellant :- Ashish Rai

Respondent :- State of U.P. and Another

Counsel for Appellant :- Dileep Kumar Shukla

Counsel for Respondent :- G.A., Shiv Kumar Singh

Hon'ble Siddharth, J.

1. Heard Sri Sandeep Kumar Shukla, Advocate, holding brief Sri Dileep Kumar Singh, learned counsel for the applicant; Sri Shiv Kumar Singh, learned counsel for the informant; learned A.G.A for the State and perused the material placed on record.
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 22.05.2023 whereby the Special Judge, SC/ST Act, Jhansi has rejected the bail application of the appellant moved by him in **Case Crime No. 413 of 2022, under Sections- 147, 149, 302, 307 IPC and Section 3(2)5 of SC/ST Act, Police Station- Premnagar, District- Jhansi.**
3. Learned counsel for the appellant has contended that the co-accused, Arun, has been granted bail by co-ordinate Bench of this Court on 1.5.2023 in Criminal Appeal No. 1481 of 2023. The case of the appellant stands on identical footing, hence the appellant is also entitled for bail on the ground of parity for the reasons given in criminal appeal of co-accused. The appellant is languishing in jail since 14.12.2022.

4. Learned A.G.A has opposed the prayer for bail, but does not dispute the claim of parity.

5. It appears that the court below has not properly considered the case of the appellant. Hence, the order of rejection of bail passed by the court below dated 22.05.2023 is, hereby, set aside.

6. 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.

7. Let appellant, **Ashish Rai**, 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.

Order Date :- 12.12.2023

Rohit