

Court No. - 85

Case :- CRIMINAL APPEAL No. - 6291 of 2023

Appellant :- Devanand Yadav @ Tuntun

Respondent :- State of U.P. and Another

Counsel for Appellant :- R.B. Singh, Surendra Nath Yadav

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

As per office report notice is served upon opposite party no.2.

Heard learned counsel for the appellant, 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 16.12.2022 whereby the Special Judge, SC/ST Act/Additional Sessions Judge, Gorakhpur has rejected the bail application of the appellant moved by him in Case Crime No. 89 of 2019, under Sections 302, 201 IPC and Section 3(2)5 SC/ST Act, Police Station Barhalganj, District Gorakhpur.

The facts of the case are that on 02.03.2019 at around 8.00 am the husband of the informant namely Ramsharan left his house. He could not be traced inspite of search. On 03.3.2019 at around 8.00 am his dead body was found lying in a field. The informant identified the dead body as of her husband.

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 not named in the FIR. The name of the appellant was disclosed by witness Sangeeta during investigation who is said to be the eye witness of the incident. It is submitted that there is no eye witness of the incident. The statement of alleged eye witness Sangeeta has been recorded with the collusion of her father. No motive has been attributed to the appellant. There is no allegation under Section 3(2)5 of SC/ST Act against the appellant. It is further submitted that till date the statement of one prosecution witness has been recorded. Co-accused Brajesh Yadav and Aniruddha @ Munshi have been granted bail by co-ordinate Bench of this Court vide order dated 25.05.2023. It is a case of

malicious prosecution under the provisions of S.C./S.T. Act. Appellant is languishing in jail since 09.03.2019 having no criminal history. 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 argued that witness Sangeeta has attributed the specific role of strangulating with a rope to the Ramsharan to the appellant and as a result of which he died. Witness Sangeeta is eye witness of the incident and her statement is yet to be recorded during trial. So far as the bail granted to the co-accused is concerned, they have been attributed the role of catching hold the deceased at the time of incident, therefore, the role of the present appellant is not identical with them. The appellant is not entitled for 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 16.12.2022 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.

However, the trial court is directed to record the statement of witnesses Sangeeta within three months from the date of production of certified copy of this order.

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 :- 28.10.2023

Mohit