

Court No. - 64

Case :- CRIMINAL APPEAL No. - 6690 of 2023

Appellant :- Sanju

Respondent :- State of U.P. and Another

Counsel for Appellant :- Amit Saxena

Counsel for Respondent :- G.A.,Ardhendu Shekhar Sharma,Ram Babu Sharma

Hon'ble Siddharth,J.

Heard learned counsel for the appellant; learned AGA for opposite party no.1; Shri Ram Babu Sharma, 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 6.6.2023, whereby the Special Judge, SC/ST Act,/Additional Sessions Judge, Ghaziabad has rejected the bail application of the appellant moved by him in **Case Crime No. 231 of 2019 (S.S.T. No. 146 of 2019), under Sections 452,302,307,506,147,148,34,120-B IPC and Section 3(2)(V) SC/ST Act, Police Station Loni, District Ghaziabad.**

This criminal appeal has been placed before this court by way of nomination by Hon'ble The Chief Justice, since the Criminal Appeal of co-accused, Sandeep, arising out of same case crime number has been allowed vide order dated 15.5.2023. Learned counsel for the appellant submitted that bail was granted to co-accused, Sandeep, on account of delay in conclusion of trial and at that time only one prosecution witness was examined and till date only the statements of P.W.1 and P.W.2 has been recorded by the trial court.

Learned counsel for the appellant has contended that the co-accused, Sandeep, has been granted bail by this Bench on 15.5.2023 in Criminal Appeal No.5352 of 2022. 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 25.2.2019.he has criminal history of five cases which has been explained in paragraph-10 of the rejoinder affidavit.

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

Shri Ram Babu Sharma, learned counsel for the opposite party no.2 has opposed the appeal with all vehemence at his command and has referred to the injury report of the deceased. He has further pointed out that delay in trial has been caused by the accused themselves and appellant can not take benefit of delay in conclusion of trial. He has referred the order sheet of the trial court which shows that co-accused, who have been enlarged on bail, have repeatedly sought adjournments, before the trial court and trial court has issued non-bailable warrants against the co-accused, Rakesh and other co-accused. On some dates co-accused were not brought from the jail to the court which resulted in delay in conclusion of trial.He has submitted that appellant can not take benefit of delay in trial when co-accused have not cooperated with trial.He has submitted that one accused or the other are always absent. They are not permitting the trial court to proceed and hence appellant should not be enlarged on bail.

After hearing the rival contention, this court finds that appellant is in jail and for the fault of the co-accused, he cannot be kept in jail for indefinite period.It was for the trial court to separate the trial of the co-accused, who had absconded from proceedings for long. Hence, the order of rejection of bail passed by the court below dated 6.6.2019 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, Sanju 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 :- 16.10.2023

Atul kr. sri.