

Court No. - 85

Case :- CRIMINAL APPEAL No. - 7398 of 2023

Appellant :- Sanjay

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shyam Lal, Abhilasha Singh, Ashutosh Yadav

Counsel for Respondent :- G.A., Prashant Singh, Raj Deo Singh, Rajkumar Verma, Sakshi Patel, Shiv Naresh, Raj Deo S

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, Sri Shiv Naresh, 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 order dated 09.05.2023 passed by learned Special Judge (SC/ST Act)/Additional Sessions Judge, Hapur in Bail Application No. 1353 of 2023, arising out of Case Crime No. 111 of 2023, under Sections 302, 201, 120-B IPC and Section 3 (2) (v) of SC/ST Act, Police Station Pilkhuwa, District Hapur.

As per the facts of the case a missing report dated 26.02.2023 was lodged by Pooja, the sister of deceased Sushil and a GD entry No.48 was made on the basis of this missing report. On the basis of this missing report during investigation, it was disclosed that dead body of an unknown person was found in a drain. The inquest report regarding that dead body was prepared on 21.02.2023, on same date postmortem was also done and as per report, the death was found to be caused by strangulation. The viscera was preserved but viscera report has not been received till date. After the dead body was found to be of Sushil who was missing since 18.02.2023, missing report was converted into FIR on 10.03.2023

Learned counsel for the appellant argued that the appellant has been falsely implicated in this case. It is further argued that there is no eye-witness of the incident. The first informant is also not an eye-witness of the incident. This is a case of circumstantial evidence where the chain of circumstances does not constitute any offence against the appellant. Nothing has been recovered at the instance of the appellant. As per the

statement of Pooja, sister of the deceased, allegation of hatching conspiracy of murder of deceased against the appellant. It is further submitted that similarly placed co-accused Krishna and Sher Singh have already been granted bail by the co-ordinate Bench of this Court vide order dated 03.08.2023 and 27.09.2023 passed in Criminal Appeal Nos. 6817 of 2023 and 7768 of 2023 respectively. He further submits that since the role of the appellants are identical to that of the co-accused who has already been enlarged on bail, they are also entitled to be enlarged on bail on ground of parity. The appellant's criminal history has been explained in paragraph-2 of the Supplementary affidavit. 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 16.03.2023 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 appellant in his confessional statement confessed that he alongwith other accused committed murder of the deceased.

In rebuttal, learned counsel for the appellant submitted that confessional statement of appellant has no evidentiary value.

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, **Sanjay** 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 :- 9.11.2023

PS