

Court No. - 85

Case :- CRIMINAL APPEAL No. - 7442 of 2023

Appellant :- Rajiv

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rahul Saxena

Counsel for Respondent :- G.A.,Manoj Kumar Patel

With

Case :- CRIMINAL APPEAL No. - 7467 of 2023

Appellant :- Manoj

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rahul Saxena

Counsel for Respondent :- G.A.,Manoj Kumar Patel

Hon'ble Mayank Kumar Jain,J.

1. Both the Criminal Appeals are arising out of same case crime number, therefore, the same are being decided by this common order.

2. Heard learned counsel for the appellants, learned counsel for the informants, learned Additional Government Advocate for the State of U.P. and perused the record.

3. This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellants with the prayer to set aside the bail order dated 13.06.2023 passed by learned Special Judge (SC/ST Act), Pilibhit in Bail Application No. 1285 of 2023 (Rajiv & another Vs. State of U.P.), arising out of Case Crime No. 451 of 2019, under Sections 147, 148, 149, 302, 506 I.P.C., Sections 3(2) (v) of SC/ST Act, Police Station Bisalpur, District Pilibhit.

4. There is allegation in the FIR that sister of the appellants entered into love marriage with the deceased, Sachin, five months ago. Thereafter appellants and co-accused are alleged to have called him on their place and thereafter his dead body was found near the house of the appellants. The appellants have been implicated in this case alongwith co-accused on suspicion that they have caused the murder of the deceased. They were not ready to marry the

deceased with their daughter.

5. Learned counsel for the appellants submit that appellants are innocent and they have been falsely implicated in this case. It is submitted that specific role for assaulting with 'Baka' is attributed to appellant-Manoj while assaulting with 'Danda' is attributed to appellant-Rajiv. There is no injury of danda noted on the person of deceased at the time of postmortem. It is submitted that all the witnesses of fact have been examined and there is no possibility of tampering the evidence. It is also submitted that co-accused Harnandan has already been granted bail by the co-ordinate Bench of this Court vide order dated 03.05.2023 passed in Criminal Appeal No.780 of 2020. The witness Sunita wife of the informant is not produced by the prosecution during trial and formal witnesses are being recorded. Informant is not the eye witness. Appellant-Manoj is languishing in jail since 26.08.2019 and appellant Rajiv is languishing in jail since 02.11.2020 and in case they are released on bail, they will not misuse the liberty of bail and will cooperate in the early disposal of the case.

6. Per contra, learned A.G.A. assisted by learned counsel for the informant vehemently opposed the prayer for bail and submitted that so far as accused Manoj is concerned stab wounds were noted on the person of the deceased at the time of postmortem. Motive is attributed to both the appellants as they were not happy that their sister Anju had solemnized marriage with the deceased.

7. Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the active participation of the appellant Manoj in the commission of crime, I do not find it fit case for bail.

8. Since the trial court has passed the impugned order after appreciating the evidence available on record, there is no occasion to interfere with the finding of fact recorded by the trial court, hence, the present criminal appeal lacks merit and deserves to be dismissed.

9. Accordingly, the Criminal Appeal No. 7467 of 2023 is **dismissed**.

10. However, the trial court is directed to expedite the trial within a period of six months from the date of receipt of certified copy of this order without granting any unnecessary adjournment to either of the parties subject to full co-operation by the appellant.

11. So far as appellant- **Rajiv** is concerned, it appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has not 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 13.06.2023 is, hereby, set aside.

12. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; 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.

13. Let appellant, **Rajiv** 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.

14. 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.

15. 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.

16. 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.

17. The Criminal Appeal No. 7442 of 2023 is **allowed**.

Order Date :- 16.12.2023

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