

Neutral Citation No. - 2023:AHC:232812

Reserved On:- 24.11.2023

Delivered On:- 07.12.2023

Case :- CRIMINAL APPEAL No. - 8264 of 2023

Appellant :- Prem Singh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Dharendra Bahadur Singh, Kamlesh Kumar
Dwivedi

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

Hon'ble Siddharth, J.

1. Heard Sri Dharendra Bahadur 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 24.03.2023 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. Co-accused, Jandail Singh, has been enlarged on bail by the following order :-

“1. Heard Sri Amit Daga, learned counsel for the applicant; Sri Shiv Kumar Singh, learned counsel for the informant; learned AGA 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 22.02.2023 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 applicant submits that the appellant was not named in the FIR. His name has surfaced in the confessional statement of alleged injured, Sahab Singh, which was belatedly recorded on 13.12.2022. The incident took place on 07.10.2022. He has submitted that the statement of Sahab Singh aforesaid is not reliable. The appellant and the injured, Sahab Singh, are resident of different villages. The investigating officer did not tried to find out the location of the appellant from any C.D.R details. He had no motive to commit the alleged offence. Dispute was between the deceased, Manoj and co-accused, Bhajju, regarding money deal. The recording of statement of injured, Sahab Singh, at a belated stage has not been explained. Earlier he was examined at Medical College, Jhansi and then treated at Apollo Hospital, Gwalior from where he was discharged on 17.10.2022. He has submitted that the alleged incident never took place. Injured, Sahab Singh, is servant of Vinod and Rs. 14 lakhs of the deceased, Manoj, was due upon Vinod and only to save Vinod, injured has cooked up the entire prosecution story. He has submitted that the court below has not properly appreciated the facts of the case while denying the bail of the appellant. The other co-accused, namely, Arun, Sajjan Singh @ Sachin, Sushil and Sachin, have already been enlarged on bail who were also named by the injured, Sahab Singh. He has further submitted that probable time of death of the deceased was found to be one day in his post-mortem conducted between 05:20 p.m to 06:00 p.m on 08.10.2022. The time of incident alleged in the FIR is 00.00 hours on 07.10.2022. Rigor mortis was found all over the body of deceased at the time of post-mortem at about 05:20 p.m on 08.10.2022. He has further submitted that in case the alleged incident took place at 00.00 hours on 07.10.2022, more than 17 hours have passed and therefore the presence of rigor mortis all over the dead body of the deceased is not possible after 17 hours from 00.00 hours on 07.10.2022. The appellant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 14.12.2022. It is a case of malicious

prosecution under the provisions of SC/ST Act. In case, the appellant is released on bail, he will not misuse the liberty of bail.

4. Learned counsel for the informant has vehemently opposed the arguments advanced by counsel for the appellant. They have pointed out that on the pointing out of appellant the hammer used in alleged crime has been recovered. There is also a confessional statement of appellant recorded by the investigating officer.

5. Per contra, learned A.G.A. has also supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant and submits that the allegations involved are very serious in nature. But he could not point out any material to the contrary. He further submits that in case the appellant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail. The appellant is entitled to be enlarged on bail.

6. After hearing the rival contentions, this Court finds that although the appellant has been implicated in this case and his confessional statement and recovery of hammer has been shown from his pointing out but he had no dispute regarding money with co-accused, Vinod and deceased, Manoj. He is stated to be brother of co-accused, Bhajju. The delay in recording the statement of injured, Sahab Singh, has not been explained anywhere. The appellant was implicated because of his brother, Bhajju. False implication of the appellant cannot be rule out. This appears to be his first implication. While considering the bail application of co-accused, Pappu @ Mohar Singh, the arguments advanced in this bail were not advanced, hence, despite dismissal of co-accused, Pappu @ Mohar Singh, applicant is entitled to bail.

7. It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the Court below has not properly considered the facts of the case. Hence, in view of above consideration, the order of rejection of bail passed by the court below dated 22.02.2023 is, hereby, set aside.

8. 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.

9. Let appellant, Jandail Singh, 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 within period of one year 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.

Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days. ”

4. This Court finds that while the allegation of recovery of hammer was made against co-accused, Jandail Singh. The applicant has been implicated on the allegation of recovery of one *danda*. Since co-accused, Jandail Singh, has been enlarged on bail vide Criminal Appeal No. 5985 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 25.01.2023.

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

6. 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 24.03.2023 is, hereby, set aside.

7. 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.

8. Let appellant, **Prem Singh**, 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 :- 07.12.2023

Rohit