

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8498 of 2023

Appellant :- Vegpal Singh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Jayant Prakash Singh

Counsel for Respondent :- G.A., Amar Singh Yadav

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Heard learned counsel for the applicant and learned A.G.A. for the State. As per mention slip supplied by the learned counsel for the appellant, learned counsel for the opposite party was informed by him regarding hearing of the appeal but learned counsel for the opposite party no.2 did not put in appearance at the time of hearing.

The instant appeal has been filed against the order dated 27.07.2023 passed by Special Judge ST/ST Act, Saharanpur, in S.T. No. 149 of 2014, arising out of Case Crime No. 246 of 2013, under Section 304 I.P.C. and Section 3(2)(5) SC/ST Act, Police Station Rampur Maniharan, District- Saharanpur, pending in the court of Special Judge SC/ST Act, Saharanpur.

By impugned order the bail application of the applicant was rejected by the trial court.

It is argued by the learned counsel for the appellant that a case was registered against the appellant and three other accused persons as Case Crime No. 246 of 2013, under Sections 302, 342, 506 I.P.C. and 3(2)(5) SC/ST Act and after investigation, charge sheet was filed against Dalvir Singh (Constable), who was not named in the first information report and all the four named accused persons, who are also police personnel, were exonerated by the Investigating Officer.

Further investigation regarding the matter was conducted by C.B.C.I.D. under the monitorship of this Court. After the investigation, charge sheet was filed against appellant-Vegpal Singh and three other accused persons (not named in the first information report) under Sections 342, 323, 504, 506 I.P.C. and 3(1) (10) of SC/ST Act Police Station Rampur Maniharan, District- Saharanpur on 19.12.2017. As the first charge sheet was

filed against co-accused Dalvir Singh in same Case Crime No. 246 of 2013, S.T. No. 149 of 2014 is pending against co-accused Dalvir Singh, under Sections 304, 342, 506 I.P.C. and 3(2)(5) of SC/ST Act. On the basis of the charge sheet filed against Vegpal Singh and three other accused persons in same Case Crime No. 246 of 2013, S.T. No. 02 of 2018 is pending before the trial court.

On 20.02.2023, the first informant Manish Kumar in Case Crime No. 246 of 2013, S.T. No. 149 of 2014 (State Versus Dalvir Singh) under Sections 342, 323, 504, 506 I.P.C. and 3(1) (10) SC/ST Act, moved an application under Section 319 Cr. P.C. with the allegation that in the statements of the first informant PW-1 Manish Kumar, PW-2 Rishi Pal, the then Station Officer Vegpal Singh, Sub-Inspector Suresh Chandra Tyagi, constable Pintoo Saroha, constable Gudhal and Dharmendra have also been named as the persons causing the incident, hence all these persons be summoned to face the trial. This application under Section 319 Cr. P.C. was allowed by the Trial Court vide order dated 05.07.2023 in S.T. No. 149 of 2014 and the present applicant Vegpal Singh was summoned to face trial under Sections 304 I.P.C. and 3(2)(5) of SC/ST Act. As regarding same Case Crime No. 246 of 2013 in S.T. No. 02 of 2018 the present appellant Vegpal Singh is facing trial under sections 342, 323, 504, 506 I.P.C. and 3(1) (10) of SC/ST Act, his summoning, on an application under Section 319 Cr. P.C. in Case Crime No. 246 of 2013, S.T. No. 149 of 2014 is against the law. He has been bail out earlier under Sections 342, 323, 504, 506 I.P.C. and 3(1) (10) of SC/ST Act. Cause of death is found to be sudden cardiac arrest. Hence prayer is made accordingly.

Learned A.G.A. however, opposed the prayer for bail and submitted that the appellant is the main accused in the case. He was named in the first information report earlier. Charge sheet under Sections 342, 323, 504, 506 I.P.C. and 3(1) (10) SC/ST Act also been filed against him by C.B.C.I.D., hence he should not be bailed out under section 304 I.P.C and Section 3(2)(5) of SC/ST Act. Criminal history of one case is also disclosed against the appellant.

Admittedly, a first information report as Case Crime No. 246 of 2013, under Sections 302, 342, 506 I.P.C. and 3(2)(5) SC/ST Act was lodged by the first informant Manish Kumar against the present applicant and three other accused persons. After investigation charge sheet was filed only against one constable Dalvir Singh, who was not named in the first information report and all the four named accused persons in the first information report were exonerated. Later on after further investigation by the

C.B.C.I.D., a charge sheet was filed against the appellant and against three other police personnel not named in the first information report under Sections 342, 323, 504, 506 I.P.C. and 3(1) (10) of SC/ST Act. Admittedly the appellant has been bailed out under these sections.

Now the bail is being sought by the applicant under Section 304 I.P.C. and Section 3(2)(5) SC/ST Act in same Case Crime No. 246 of 2013 in S.T. No. 149 of 2014. It is noteworthy that arising out of the same Case Crime No. 246 of 2013, S.T. No. 149 of 2014 is pending against Dalvir Singh (constable), under Sections 304, 342 506 I.P.C. and 3(2) (V) of SC/ST Act and S.T. No. 02 of 2018 is pending against Vegpal Singh, the then Station House Officer, Police Station Rampur Maniharn, District Saharanpur and three other constables Pintoo Saraha, Ashish Chaudhari and Ashok Rathi under Sections 342, 323, 504, 506 I.P.C. and Section 3(1) (10) of SC/ST Act. Thus, regarding Case Crime No. 246 of 2013, two S.Ts. No. 149 of 2014 and S.T. No. 02 of 2018 are pending before the concerned court as per the version of the appellant counsel. It is argued that once Vegpal Singh is facing trial in the same Case Crime No. 246 of 2013 in S.T. No. 02 of 2018, under Sections 342, 323, 504, 506 I.P.C. and Section 3(1)(10) of SC/ST Act he could not be summoned in S.T. No. 149 of 2014, arising out of the same Case Crime No. 246 of 2013 on an application under Section 319 Cr. P.C. to face trial under Additional Section 304 I.P.C. and 3(2)(5) of SC/ST Act, rather both the STs must be consolidated and be tried together by the court before whom both these STs are pending. As appeals against the order dated 05.07.2023 allowing application of the first informant under Section 319 Cr., P.C. in S.T. No. 149 of 2014, Case Crime No. 246 of 2013 are pending before this Court, hence the finding regarding order dated 05.07.2023 is not feasible in this order at this stage.

As per first information report the allegation is of committing murder of the father of the first informant in police custody by the Station House Officer the present appellant and other police personnel at the police Chowki concerned. Admittedly in the first investigation, charge sheet was not filed against the applicant. Further investigation was done by the C.B.C.I.D. under the monitor ship of this Court. After this investigation, charge sheet was filed against the present applicant along with three other co-accused persons under Sections 342, 323, 504, 506 I.P.C. and 3(1) (10) of SC/ST Act. and with regard to those sections, appellant has already been bail out in S.T. No. 02 of 2018, arising out of same Case Crime No. 246 of 2013.

Later on in S.T. No. 149 of 2014 arising out of same Case Crime No. 246 of 2013 pending against one accused constable Dalvir Singh only an application under Section 319 Cr. P.C. was moved by Manish Kumar the first informant. Allowing that application the trial court vide order dated 05.07.2023 summoned the present appellant and three others to face trial under Section 304 I.P.C. and Section 3(2)(v) of SC/ST Act. The bail application of the appellant under Section 304 I.P.C. and Section 3(2)(v) of SC/ST Act. was rejected vide impugned order dated 27.07.2023.

It is also argued that in the statement under Section 161 Cr. P.C., the first informant has stated that when his father was taken to Maniharan Police Chowki, first informant was not permitted to enter into the police Chowki. He was stopped at the Road. His father was badly thrashed at the police Chowki and thereafter his father was laid down on the bench outside the police Chowki in unconscious condition. The police personnel were kicking him saying that nothing has happened to hi. He was pretending of being unconscious. His father was offered water but being in unconscious stage, he could not consume the water and when the water was administered him forcibly, through his nose, the water entered into his wind pipe causing death. P.W.-I Manish Kumar the first informant changed his version in the court and stated that when he went to police Chowki, he found that the police personnel including the present appellant were thrashing his father badly with baton and kicks. Appellant is on bail under Sections 342,323, 504,506 I.P.C. and Section 3(1)(10) of SC/ST Act in the same Case Crime No. 246 of 2013, the cause of death is found to be sudden cardiac arrest (natural death) as per report of medical board.

As there is no allegation of misusing the bail by the appellant earlier, so considering the submission of the parties after perusal of the record, period of sentence and without expressing any opinion on the merits, I find it to be a fit case for allowing the appeal and grant of bail to the appellants.

The appeal is **allowed**. Order dated 27.07.2023 rejecting the bail application of the appellant by the trial court is set aside.

Let appellant ***Vegpal Singh, in S.T. No.149 of 2014, Case Crime No. 246 of 2013*** be released on bail on furnishing personal bond and two sureties in the like amount to the satisfaction of the trial court with the conditions.

1. The appellant will attend and co-operate the trial proceedings

pending before the court concerned on the dates fixed after release.

2. He will not tamper with the witnesses.

3. He will not indulge in any illegal activities during the bail period.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the trial court shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 28.10.2023

T.S.