

Neutral Citation No. - 2023:AHC:203568

Reserved On:- 09.10.2023

Delivered On:- 17.10.2023

Case :- CRIMINAL APPEAL No. - 8383 of 2023

Appellant :- Teepu @ Ravindra Chandra Sahu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Deepak Singh

Counsel for Respondent :- G.A., Ashutosh Kumar Singh, Jalaj Singh

Hon'ble Siddharth, J.

1. List has been revised.
2. Heard Sri Deepak Singh, learned counsel for the appellant; Sri Ashutosh Kumar Singh, learned learned counsel for opposite party no.2 and learned AGA for State perused the material placed on record.
3. This criminal appeal has been placed before this Court after nomination from Hon'ble The Chief Justice since Criminal Appeal No. 6620 of 2022 of co-accused, Amit Kumar Yadav, was allowed by this Court by the following order dated 20.04.2023:-

"Heard learned counsel for the appellant; learned AGA for opposite party no.1; Sri Deepak Singh, 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 20.8.2022 whereby the Special Judge, SC/ST Act, Kanpur Nagar, has rejected the bail application of the appellant moved by him in Case Crime No. 218 of 2022, under Sections 364, 302, 201 IPC and Section 3(2)(5) SC/ST Act, Police Station Barra, District Kanpur Nagar.

There is allegation in the FIR that on 6.4.2022, son of the informant, Rishabh Singh, aged about 22 years, came back to house at 16:45 hours after getting her mother treated and a call came on his mobile phone at about 5:00 P.M. He left the house saying that he is coming back within 10 minutes, but thereafter his mobile phone got switched off and his whereabouts were not known. On 7.4.2022, mother of the deceased got a missing report lodged and in the evening message was received that an unknown dead body has been found in the canal. In the post mortem house, the dead body was recognized by the informant, as of his son.

Learned counsel for the appellant has submitted that no one has seen the incident. The cause of death of the deceased was found to be asphyxia due to

throttling. Two ante mortem injuries were found on the neck and occipital region of the skull of the deceased. During investigation, it has come that Km. Diksha was friend of the deceased and on 6.4.2022 she called the deceased. The deceased informed that he is with his old friends and going to Mahoba. His phone was snatched by his friends and hence she disconnected the call. She again tried to contact to him. She informed that the persons with the deceased were in the state of intoxication and she informed this fact to Pragati and Richa, sisters of the deceased. The deceased talked to his sister at about 7:00 p.m. on 6.4.2022. From the CCTV footage collected by the I.O., the deceased was seen in a scorpio car. One, Rakesh Kumar Rathore, informed the Investigating Officer that on 5.4.2022 around 10:00 hours, one Tipu @ Ravindra Sahu alongwith his friends, namely, Taufique @ Mamu and Amit Yadav, the appellant, came to his house and took his vehicle for going to Mahiar for two days. Statement of one, Chaman, was recorded, who informed that the deceased had affair with Sakshi Verma, but on account of some differences with deceased, she developed relationship with co-accused, Tipu @ Ravindra Sahu. The deceased has made objectionable videos and photographs of Sakshi and after she developed relationship with Tipu, the deceased shared her photographs with some persons. Tipu, on coming to know about the same, developed enmity with the deceased and he killed, Rishabh, with the assistance of his friends, namely, Taufique and Amit Yadav. In the confessional statement of Tipu, he has confessed to his involvement alongwith appellant and co-accused, Abhay Pratap Singh in the murder of Rishabh. Some belongings of the deceased were recovered on the pointing out of co-accused, Tipu and Taufique on 21.5.2022. The appellant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 11.4.2022. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. and learned counsel for opposite party no.2 have supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant. Learned AGA has submitted that the manager of the hotel, wherein the appellant, Tipu, Taufique and Abhay Pratap Singh lived together, has testified that they booked the room number 101 in his hotel on 6.4.2022 and again booked the same room at 10:45 hours and vacated the same on 5:00 p.m. Learned counsel for the opposite party no.2 has placed the bail rejection order of co-accused, Abhay Pratap Singh.

After hearing the rival contentions, material collected by the Investigating Officer in the form of CCTV footage, statement of hotel manager and statements of witnesses recorded, this Court finds that the motive of committing the alleged crime has been assigned to co-accused, Tipu and recovery of the goods belonging to the deceased has been made from the pointing out of co-accused, Tipu and Taufique. The appellant has allegedly only accompanied them. There is no allegation that he had motive to commit the alleged offence. The deceased was having relationship with Sakshi and thereafter co-accused, Tipu became intimate with her. Since the deceased had made her objectionable photographs viral, it was Tipu, who was annoyed with the deceased and he committed his murder.

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 case of the appellant. Hence, in view of above consideration, the order of rejection of bail passed by the court below dated 20.8.2022 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, Amit Kumar Yadav, 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.”

4. This Court has recorded finding in the criminal appeal of co-accused that it was the appellant, who had subsequently developed friendship with Shakshi. Shakshi earlier had relationship with deceased, Rishabh Singh, later she became intimate with the appellant. Deceased, Rishabh Singh, did not liked the relationship of Shakshi with appellant and, therefore, the appellant was goaded by Shakshi to remove the deceased, Rishabh Singh, from their way.

5. Learned counsel for appellant has submitted that Shakshi Verma was not interrogated by the police to connect the appellant with the deceased and Shakshi Verma in this case. The deceased was blackmailing Shakshi because he was in possession of her incriminating video and photographs.

6. Learned counsel for informant has opposed the submissions and has submitted that the appellant approached this Court by way of Criminal Appeal No. 7740 of 2022 against the rejection of his discharge application which has been rejected by this Court on 12.01.2023 by the following finding:-

“10. In the instant case perusal of record shows that the first information report regarding abduction and murder of deceased was lodged against unknown persons. During investigation, involvement of appellant and co-accused persons was found. It was alleged that deceased was murdered due to the reason that he was having a relationship with above stated lady, who has later on started an affair with the appellant and thereafter deceased has made her photographs viral. As per prosecution version, the deceased was known to the appellant and the abduction and murder of deceased was committed knowing well that the deceased belongs to scheduled caste. Here it would be pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January 2016. The words "on the ground of" under Section 3(2) (v) have been substituted with "knowing that such person is a member of a Scheduled Caste or Scheduled Tribe". This has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction. Section 8 of SC/ST Act which deals with presumptions as to offences was also amended to include clause (c) to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise. The amended Section 8 reads as follows:

"8. Presumption as to offences. - In a prosecution for an offence under this Chapter, if it is proved that (a) the accused rendered [any financial assistance in relation to the offences committed by a person accused of], or reasonably suspected of, committing, an offence under this Chapter, the Special

Court shall presume, unless the contrary is proved, that such person had abetted the offence; (b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object. [(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.]"

11. Thus, the current regime under the SC & ST Act, post the amendment, has facilitated the conduct of an intersectional analysis under the SC/ST Act by replacing the causation requirement under Section 3(2)(v) of the Act with a knowledge requirement making the regime sensitive to the kind of evidence that is likely to be generated in cases. In the instant case in view of the material on record, it cannot be said that no case under section 3(2)(v) SC/ST Act is made out. Further, in view of the material collected during investigation, it can also not be said that a prima facie case under section 302/364/201 IPC is not made out. In view of all attending facts and circumstances of the case, it is apparent that the trial court has considered the matter in correct perspective and the application of the appellant under Section 227 Cr.P.C. seeking discharge was rightly rejected. The appeal has no force and thus, liable to be dismissed.

12. Appeal is dismissed. "

7. In view of finding recorded by this Court in the order of criminal appeals of the co-accused, this Court cannot allow the appeal of appellant at this stage grant bail to the appellant. There is ample evidence against the appellant collected by the investigating officer justifying his implication in this case.

8. Appeal is **dismissed**.

9. The court below is directed to conclude the trial against the appellant, as expeditiously as possible, preferably within a period of six months.

Order Date :- 17.10.2023

Abhishek