

Court No. - 85

Case :- CRIMINAL APPEAL No. - 8866 of 2023

Appellant :- Abhay Pratap

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rafeek Ahmad Khan, Pankaj Kumar Shukla

Counsel for Respondent :- G.A., Dharendra Singh

Hon'ble Mayank Kumar Jain, J.

Counter affidavit filed by learned counsel for the informant is taken on record.

Heard learned counsel for the appellant, Sri Dharendra Singh, learned counsel for the informant/opposite party no.2, learned AGA for the State 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 28.07.2023 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 (P.A.) Act, 1989, 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 submitted that appellant is innocent, not named in the F.I.R. and he has been falsely implicated in this case. In the confessional statement of Tipu, he has confessed the involvement of appellant in the murder of Rishabh. 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 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. Some belongings of the deceased were recovered on the pointing out of co-accused, Tipu and Taufique on 21.5.2022. It is further submitted that similarly placed co-accused Amit Kumar Yadav has already been granted bail by the co-ordinate Bench of this Court vide order dated 20.04.2023 passed in Criminal Appeal No. 6620 of 2022. It is further submitted that appellant has no previous criminal history. 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 11.04.2022 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 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 by contending that the manager of the hotel, wherein the appellant, Tipu and Taufique 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.

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, **Abhay Pratap** 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 :- 7.11.2023

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