

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9029 of 2023

Appellant :- Rajkishore @ Kishore Teli

Respondent :- State of U.P. and Another

Counsel for Appellant :- Abhishek Kumar Jaiswal, Pramod Kumar

Counsel for Respondent :- G.A., Ganesh Shanker Srivastava

With

Case :- CRIMINAL APPEAL No. - 10075 of 2023

Appellant :- Ramlakhan Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Abhishek Kumar Jaiswal, Pramod Kumar

Counsel for Respondent :- G.A., Ganesh Shanker Srivastava

With

Case :- CRIMINAL APPEAL No. - 9030 of 2023

Appellant :- Keshav Kahar

Respondent :- State of U.P. and Another

Counsel for Appellant :- Abhishek Kumar Jaiswal, Pramod Kumar

Counsel for Respondent :- G.A., Ganesh Shanker Srivastava

With

Case :- CRIMINAL APPEAL No. - 10175 of 2023

Appellant :- Ramvilas Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Abhishek Kumar Jaiswal, Pramod Kumar

Counsel for Respondent :- G.A., Ganesh Shanker Srivastava

With

Case :- CRIMINAL APPEAL No. - 9144 of 2023

Appellant :- Smt. Maina Devi

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shahroze Khan, Mohammad Zafar Yab Khan

Counsel for Respondent :- G.A., Ganesh Shanker Srivastava

Hon'ble Mayank Kumar Jain, J.

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

Counter affidavit filed today by learned counsel for the informant in Criminal Appeal no. 9029 of 2023 is taken on record.

Vakalatnama filed today by Sri Ganesh Shanker Srivastava, learned counsel on behalf of informant in Criminal Appeal Nos. 10175 of 2023 and 10075 of 2023 is taken on record.

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.

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 orders dated 04.08.2023 and 28.07.2023 passed by learned Addl. District and Sessions Judge/Special Judge (SC/ST Act), Siddharth Nagar arising out of Case Crime No. 55 of 2023, under Sections 34, 120-B, 201, 302, 323, 504 I.P.C., Sections 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va) of SC/ST Act, Police Station Bhawaniganj, District Siddharth Nagar.

The case of the prosecution as per the F.I.R is that on 05.07.2023 at around 5:00 p.m, son of the informant namely Shivraj Gautam was taken away by appellant Ram Vilas and Ram Lakhan along-with some unknown person to district Siddharthnagar. The informant inquired but no answer was given. In the morning of 06.07.2023, she got information that dead body of her son was lying opposite to the house of Abdul Majid.

Learned counsel for the appellants submit that appellants are innocent and they have not committed any incident as

mentioned in the F.I.R. It is submitted that general role have been assigned to all the accused persons. The appellant Keshav Kahar, Smt. Maina Devi and Raj Kishore are not named in the F.I.R, their names was disclosed by the informant during her statement recorded under Section 161 Cr.P.C. Deceased Shivraj was having some dispute over payment of money from Ram Vilas while Ram Lakhan Yadav was making demand of that money. The informant is not the eye witness. The other witness Babbu is also not the eye witness of the incident. It is also submitted that earlier to this incident an F.I.R bearing case crime no. 61 of 2022 under Sections 457 and 380 I.P.C was lodged against the deceased since he entered in the house of Anand, some incident of marpeet was taken place over there so that he died as a result of injuries sustained by him in that incident. Appellants Keshav Kahar and Rajkishore @ Kishore Teli have no criminal history. The appellant Rajkishore @ Kishore Teli is languishing in jail since 13.07.2023, appellant Ram Lakhan Yadav is languishing in jail since 09.07.2023, appellant Keshav Kahar is languishing in jail since 10.07.2023, appellant Ram Vilas is languishing in jail since 12.07.2023 and appellant Meena Devi is languishing in jail since 09.07.2023 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.

It is submitted on behalf of appellant Maina Devi that she is a lady having 8 children and a child of 8 months is with her inside the jail, no specific role has been assigned to her. It is also submitted that so far as recovery of her blood stained saree is concerned, there is no F.S.L report available on record to connect it with the crime.

Per contra, learned A.G.A. assisted by learned counsels for the informant vehemently opposed the prayer for bail and submitted that the deceased sustained as much as 9 injuries over his person and the cause of death was ascertained to be head injury. The blood stained saree was recovered from the house of the appellant Maina Devi. The site plan discloses two places of occurrence, one where the deceased was beaten by the appellants and when he ran away to save himself he was tied up with the electric pole and was addressed with caste related words and was beaten by iron rod, wooden stick and wooden patra. The witness Babbu is the eye witness of the incident.

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 appellants **Rajkishore @ Kishore Teli, Ram Lakhan Yadav, Keshav Kahar and Ram Vilas Yadav** in the commission of crime, I do not find it fit case

for bail.

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.

Accordingly, the Criminal Appeal Nos. 9029 of 2023, 10075 of 2023, 9030 of 2023 and 10175 of 2023 are **dismissed**.

So far as appellant- **Smt. Maina Devi** 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 28.07.2023 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; 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, **Smt. Maina Devi** be released on bail in the aforesaid case crime number on her 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 she

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 No. 9144 of 2023 is **allowed**.

Order Date :- 8.11.2023

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