

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9432 of 2023

Appellant :- Dalchand Lodhi Rajpoot

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ashutosh

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

Heard Mr. Ashutosh, learned counsel for the appellant, learned AGA for opposite party no.1 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 16.06.2023 whereby the Special Judge, SC/ST Act, Civil Lines, District Rampur has rejected the bail application of the appellant moved by him in Case Crime No. 84 of 2023, under Sections 302, 201 of IPC, and Section 3(2)V of SC/ST Act, Police Station Civil Lines, District Rampur.

As per the FIR the case of the prosecution is that accused Sompal who is the uncle of the appellant, was a driver. The deceased Poonam was also a driver of a vehicle. Both of them eloped with each other. On 05.03.2023 the wife of the informant went to the house of Sompal. The informant got a call from Sompal that his wife (deceased) was compelling him to marry with her in spite of his refusal. On 06.03.2023 the informant reached to the house of accused Sompal where his wife Poonam along with the present appellant and other named accused was present. The informant asked her wife to accompany with him but she refused. On 7.03.2023 the informant made a call to his wife but his mobile number was found to be switched off. The informant reached at the house of the appellant and enquired about his wife and he was informed that his wife had left their house without informing anything. Later on, dead body of his wife was found under Panwaria bridge under police station Civil Lines, Rampur.

Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that appellant is Uncle of the accused Sompal. The main

motive has been attributed to co-accused Sompal. It is further submitted that in his confessional statement Sompal assigned the role of catching hold to the appellant. There is no eye witness of the incident. The only evidence against the appellant, as per the prosecution case, is that she was seen by the informant at her house where the wife of the informant was also present which does not relate the appellant in commission of crime. It is further submitted that co-accused Smt. Omwati Lodhi Rajput having similar role to that of applicant has already been granted bail by this Court vide order dated 14.09.2023 passed in Criminal Misc. Bail Application No. 6989 of 2023. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Applicant is languishing in jail since 12.03.2023 having no criminal history. In case, the appellant is released on bail, she will not misuse the liberty of bail.

Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant and argued that as per the FSL report the piece of brick was recovered from the place of occurrence in which human blood was found.

In rebuttal, it is submitted that the said recovery is not on the pointing of the appellant. The said bloodstained brick has been recovered on the pointing of co-accused Sompal.

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 16.06.2023 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, Dalchand Lodhi Rajpoot 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 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 her 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 :- 16.10.2023

Gaurav