

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9415 of 2023

Appellant :- Mukesh Srivastava

Respondent :- State Of U.P. And Another

Counsel for Appellant :- Sushil Kumar Rao

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

As per office report, notice upon the informant/opposite party no.2 has been served personally but no one has put in appearance on his behalf.

Heard learned counsel for the appellant, 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 appellant with the prayer to set aside the bail rejection order dated 03.07.2023 passed by learned Special Judge (SC/ST Act), Deoria in Bail Application No. 1342 of 2023, arising out of Case Crime No. 48 of 2017, under Sections 302, 201 IPC and 3 (2) (V) of SC/ST Act, Police Station Baghauchghat, District Deoria.

Learned counsel for the appellant argued that appellant is innocent and he has been falsely implicated in this case. It is further submitted that appellant is not named in the F.I.R. The name of appellant surfaced during investigation on the basis of statement of Soni Devi who allegedly made telephonic call to the informant about the dead body of his son namely Govind Gaud. It is further submitted that no motive has been assigned to the appellant. Nothing incriminating article either on the pointing out of the appellant or from his possession was recovered. It is further submitted that during trial PW5 Soni Devi did not corroborate the prosecution version and turned hostile. Similarly PW6 Goldi Srivastava, who happens to be the eye witness, also did not corroborate the prosecution version during trial. So far as the other witnesses who were examined before the trial court, are not the eye witnesses of the incident. It is further submitted that nine prosecution witnesses have already been examined before the trial Court. The appellant does not have any criminal history to his credit. 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 30.04.2017 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. opposed the prayer for bail but could not dispute the aforesaid factual aspects of the matter.

In **Union of India Vs. K.A. Najeeb (2021) 3 SCC 713**, the Hon'ble Apex Court has observed that:-

"15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee v. Union of India SCC para-15 it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

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, **Mukesh Srivastava** 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 :- 27.10.2023

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