

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11022 of 2023

Appellant :- Himalay Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Adya Prasad Tewari, Km. Khushi

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, 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 19.09.2023, whereby the Special Judge, SC/ST Act/Additional Sessions Judge, Deoria has rejected the bail application of the appellant moved by him in Case Crime No. 79 of 2022, under Sections 302 read with 34 IPC and Section 3(2)5 SC/ST Act, Police Station Rudrapur, District Deoria.

According to prosecution case, informant Vishal Gautam, son of Dinesh Prasad, lodged a first information report on 22.03.2022 stating that his father, Dinesh Prasad, who used to work as a mechanic in Gupta Auto Service Centre in Rudrapur, had gone to work on 21.03.2022 at 12 p.m. to the service centre and while returning from the service centre on his motorcycle 500m away from Samrauna bridge, he was murdered by unknown persons by firing. The first information report against unknown accused persons were registered u/s 302 I.P.C. During investigation, informant, Vishal Gautam, stated in his statement recorded u/s 161 Cr.P.C. that co-accused, Ramraj Yadav, used to quarrel with his father (since deceased) on the suspicion that his father had complained about theft of motor parts from the service centre to the owner of the service centre and due to this complaint, services of co-accused, Ramraj Yadav, who worked at the service centre, was terminated. On the basis of information given by the informer, co-accused, Ramraj Yadav, and appellant, Himalaya Yadav were arrested on 23.03.2022. They confessed that as co-accused, Ramraj Yadav, had enmity with the deceased Dinesh Prasad, he gave exhortation to appellant, Himalaya Yadav, who murdered Dinesh Prasad by firing with his pistol. On the pointing out of appellant,

one pistol and two live cartridges were recovered. During investigation, on 26.03.2022, Ram Sanehi Yadav and Mithilesh Kumar, stated that on the date of incident, they have seen the co-accused, Ramraj Yadav exhorting appellant and on his exhortation, appellant fired on Dinesh Prasad, causing his death.

Learned counsel for the appellants has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that during the trial evidence of informant was recorded as prosecution witness but he is not the eye witness of the incident. Another witness PW-2 Manoj Prasad had also not seen the incident. The only eye witness recorded so far is PW-3 Ramnaresh, who did not corroborate the version of the prosecution and was declared hostile. It is also submitted that co-accused Ramraj was granted bail by this Court vide Criminal Appeal No.4436 of 2022 concluding that the role of exhortation was attributed to him. So far as the criminal history of the appellant is concerned, it is explained in para 3 of the supplementary affidavit brought on record. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellant is languishing in jail since 24.03.2022. In case, the appellant is released on bail, he 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 the statement of eye witness Mithlesh is yet to be recorded and the possibility of tempering with the witness may not be ruled out, if the appellant is released on bail. It is also submitted that a country made pistol along with cartridges was also recovered on the pointing of the appellant. He is not entitled to be released on bail.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has 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 19.09.2023 is affirmed.

Having considered the submissions of the parties noted above, finding no force in the submissions made by the learned counsel for the appellant; without expressing any opinion on the merits of the case, the Court is of the opinion that the appellant is not entitled to be enlarged on bail and the appeal deserves to be dismissed.

The criminal appeal is dismissed.

However, the trial court is directed to record the statement of eye witness Mithlesh within three months from the date of production of certified copy of this order.

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.

Order Date :- 22.11.2023

Mohit