

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10328 of 2023

Appellant :- Kishan Lal Lodhi Rajput

Respondent :- State of U.P. and Another

Counsel for Appellant :- Mohd. Akbar Shah Alam Khan, Sarita Gupta

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

1. Shri Vijay Kumar Rai, learned AGA for the State filed counter affidavit is taken on record.

2. List has been revised. Despite service of notice upon the opposite party no.2, no one appears on his behalf.

3. Heard learned counsel for the appellant, learned AGA for opposite party no.1 and perused the material placed on record.

4. 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, Rampur has rejected the bail application of the appellant moved by him in Special Case No.72 of 2023 arising out of Case Crime No. 84 of 2023, under Sections 302, 201 of I.P.C. and Section 3(2)(v) of SC/ST Act, Police Station Civil Lines, District Rampur.

5. As per the FIR the case of the prosecution is that accused Sompal who is the nephew 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.

6. 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 a relative of co-accused Sompal. The main motive has been attributed to co-accused Sompal. It is further submitted that the confessional statement of the appellant was recorded and on the basis of that, he made accused in this case. There is no eye witness of the incident. The only evidence against the appellant is that he was seen by the informant at the house of co-accused Sompal where his wife was also present. There is no recovery from the possession of the appellant. It is submitted by learned counsel for the applicant that similarly placed co-accused, Smt. Omwati Lodhi Rajput and Dalchand Lodhi Rajpoot have already been enlarged on bail by this Court by order dated 14.09.2023 and 16.10.2023 passed in Criminal Appeal Nos.6989 of 2023 and 9432 of 2023 respectively. He has further submitted that since the role of the applicant is identical to that of co-accused, Smt. Omwati Lodhi Rajput and Dalchand Lodhi Rajpoot, who have already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity and for the reasons given in the order of co-accused. Applicant is languishing in jail since 12.03.2023 having no criminal history to his credit. In case, the appellant is released on bail, he will not misuse the liberty of bail.

7. 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 submits that the allegations involved are very serious in nature but he could not point out any material to the contrary.

8. 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.

9. 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.

10. Let appellant, Kishan Lal Lodhi Rajput be released on bail in the aforesaid case crime number on his 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 his counsel.
- (vi) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

11. 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.

12. 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.

13. 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.

14. The criminal appeal is **allowed**.

Order Date :- 30.10.2023/A.N. Mishra