

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10169 of 2023

Appellant :- Ulfan @ Gulfan @ Gulla

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sumit Kumar Srivastava, Krishna Sharma

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

List revised.

Learned A.G.A. submits that service of notice upon the informant/opposite party no.2 has been duly served 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 19.09.2023 passed by learned Special Judge SC/ST (P.A.) Act, Mainpuri in Bail Application No. 4001 of 2023, arising out of Case Crime No. 190 of 2023, under Sections 302 IPC and Section 3 (2) 5 of SC/ST Act and Sections 3/25/27 Arms Act, Police Station Ghiror, District Mainpuri.

As per prosecution version in the intervening night of 12/13.06.2023, when the father of the informant namely Mahesh Chandra was sleeping at his grocery store, some unknown person had committed his murder by firing with fire-arm weapon.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. The informant Rohit Kumar did not disclose the name of appellant during his first and second statements before the Investigating Officer during investigation. It is further submitted that on the basis of C.C.T.V. Footage the appellant was connected with the crime and a country-made pistol is shown to be recovered from his possession at the time of his arrest. It is further submitted that during third statement of the informant before the Investigating Officer, he stated that appellant filled petrol of Rs. 110/- in his motorcycle from the grocery store of informant's father and paid

Rs. 100/- only. Thereafter, his father took his motorcycle and when he paid remaining amount of Rs. 10/-, he released motorcycle of the appellant for that reason appellant committed murder of his father. It is further submitted that if this fact was well within the knowledge of informant then he should have named the appellant in the F.I.R. 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 20.06.2023 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.

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, **Ulfan @ Gulfan @ Gulla** 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 :- 31.10.2023/AKT