

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10238 of 2023

Appellant :- Raja Parihar

Respondent :- State of U.P. and Another

Counsel for Appellant :- Amar Bahadur Maurya

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

Supplementary affidavit filed today by the learned counsel for the appellant is taken on record.

Counter affidavit filed today by learned A.G.A is taken on record.

Heard learned counsel for the appellant, learned AGA for opposite party no.1 and learned counsel for the informant 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 26.08.2023 whereby the Special Judge, SC/ST Act, Jalaun (Orai) has rejected the bail application no. 1309 of 2023 of the appellant moved by him in Case Crime No.25 of 2022, under Sections 302, 394, 34, 404, 411, 120B of IPC, and Section 3(2)V of SC/ST Act, Police Station Ait, District Jalaun.

Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that after rejection of the first criminal appeal filed on behalf of the appellant the statement of witnesses of fact namely PW-3 Sonpal and PW-4 Nawal Kishore are recorded who are alleged to be the witness of last seen together with the deceased in the company of the appellant. Both of witnesses of fact have not corroborated the version of the prosecution and have turned hostile. It is further submitted that the statement of the informant and the person who has informed about the existence of dead body has also been recorded as PW-1 Geeta Devi and PW-2 Maniram respectively. They have not disclosed anything against the appellant. It is submitted that so far as the recovery of weapon used in the crime and the mobile of the deceased is concerned, is on the pointing of three accused persons including appellant and

there is no independent witness of such recovery, it indicates that the recovery is planted. It is further submitted that co-accused Sonu Pal has already been enlarged on bail by this Court vide order dated 09.10.2023 in Criminal Appeal No. 5375 of 2023. He further submits that since the role of the appellant is identical to that of the co-accused who has already been enlarged on bail, he is also entitled to be enlarged on bail on ground of parity. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Applicant is languishing in jail since 31.03.2023 and criminal history of the appellant has been explained in Annexure No. S.A-1 of the supplementary affidavit. 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 recovery of weapon used in the crime and the mobile of the deceased has been made on the pointing of the appellat but it could not be controverted the recovery is made on the pointing of three persons and there is no public witness of the said recovery. The witness who had seen the deceased in the company of the accused before his death has not corroborated the prosecution version.

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 c15. 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." annot indefinitely be

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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 impugned order of rejection of bail passed by the trial court 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, Raja Parihar be released on bail in the aforesaid case crime number on his furnishing a personal bond and two local 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.

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 :- 31.10.2023

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