

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10692 of 2023

Appellant :- Rajpal @ Bantoli

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sheshadri Trivedi

Counsel for Respondent :- G.A., Shashi Dhar Shukla

Hon'ble Mayank Kumar Jain, J.

1. List has been revised. Despite service of notice upon the opposite party no.2, no one appears on his behalf.
2. Heard learned counsel for the appellant, learned AGA for opposite party no.1 and perused the material placed on record.
3. 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, Firozabad has rejected the bail application of the appellant moved by him in Case Crime No. 170 of 2023, under Section 304 of IPC, and Section 3(2)5 of SC/ST Act, Police Station Phareeha, District Firozabad.
4. There is an allegation against the appellant that on 21.01.2023 at around 8.00 pm appellant along with other persons administered liquor to the husband of the informant namely Premchandra on the direction of Rajesh. Appellant was driving a tractor and intentionally to commit the murder of Premchandra ran over the 'Rotabetar' over him as a result of which the legs of Premchandra got crushed. Before his death Premchandra gave a statement that appellant with other persons had intentionally ran over the 'Rotabetar' on the pretext of enmity of election of Gram Pradhan.
5. Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that the role of co-accused Rajesh and Shani was assigned in the FIR as conspirator but they have been exonerated during investigation. In the inquest report the cause of death was disclosed as a result of accident. During investigation the tractor was shown to be recovered from the possession of the present appellant. It is submitted that wife of the deceased are not the eye witness of the incident and she has been given her statement on the

basis of hearsay evidence. So far as the statement made by Premchandra before his death is concerned, it does not disclose the name of the appellant. As per the CDR report the location of the appellant was not found at the place of occurrence. Appellant has criminal history of four cases to his credit. The FIR has been lodged on the basis of legal assistance. It is submitted that the case of the appellant would not travel beyond Section 304 (I) of IPC. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Applicant is languishing in jail since 14.08.2023. In case, the appellant is released on bail, he will not misuse the liberty of bail.

6. 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 witnesses Virendra, Bhagwan and Poonam are the witnesses who have seen the incident. Premchandra suffered crush injuries and cause of death was ascertained to be shock and hemorrhage. The motive is assigned to the present appellant that he was having enmity because of election of Gram Pradhan.

7. 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 19.09.2023 is, hereby, set aside.

8. 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.

9. Let appellant, **Rajpal @ Bantoli** 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.

10. 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.

11. 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.

12. 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.

13. The criminal appeal is allowed.

Order Date :- 1.12.2023

Mohit