

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10671 of 2023

Appellant :- Shahid @ Kare

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sushil Kumar Pandey

Counsel for Respondent :- G.A., Sunil Kumar Yadav

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, learned counsel for the informant, learned AGA for opposite party no.1 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 29.09.2023 whereby the Special Judge, SC/ST Act, Mathura has rejected the bail application of the appellant moved by him in Bail Application No.3999 of 2023, under Sections 323, Shahid @ Kare vs State of U.P. arising out of case crime no.98 of 2023, u/s 302 IPC and Section 3(2) (v) of SC/ST Act, Police Station Nauhheel, District Mathura.

The case of the prosecution as per FIR is that on 19.4.2023 son of the informant, namely, Saheb Singh left his house but could not return by the night. On 20.04.2023, his dead body was found in a field near the canal. His motorcycle was also not traceable.

It is submitted that the appellant is innocent and has been falsely implicated in the instant case. The name of the appellant surfaced on the basis of CCTV footage where brother of the deceased Tejpal has suspicion that appellant was sitting with the deceased and they were drinking liquor together. Tejpal is the witness of inquest proceeding but he did not disclose this fact at the time of inquest.

It is also submitted that confessional statement of the appellant was recorded in which he disclosed that he strangled the deceased with hand but at the time of inquest proceeding, a lace of shoe was found around the neck of the body, which is not recovered either on the pointing out or from the possession of the appellant.

An additional statement of the appellant was also recorded in

which it is mentioned that appellant strangled with the string (*Nara*) of his lower which is not recovered. So far as the recovery of the motorcycle of the deceased on the pointing out of the appellant is concerned, it is made from an open place. There is no public witnesses of the alleged recovery, therefore, the recovery is doubtful. The appellant has no criminal history to his credit and he is languishing in jail since 1.5.2023.

Per contra, learned counsel for the informant and learned AGA have vehemently opposed the bail of the appellant and submitted that brother of the deceased, namely, Tejpal has stated in his statement that he had seen the appellant drinking liquor with the deceased in a field. He left his brother in the company of the appellant. Earlier to this, he had seen his brother travelling on the motorcycle of the appellant. The mother (*Nathiya*) and wife of the deceased *Nathiya* and *Sheetal* had seen the appellant in the company of the deceased last time when deceased left his house. The motorcycle of the deceased was also recovered on the pointing of the appellant, therefore, the chain is complete and indicates that the appellant is the author of the crime.

In rebuttal, learned counsel for the appellant submitted that the statement of Tejpal cannot be relied because he is the witness of the inquest proceeding and he did not disclose that he had seen the appellant and deceased travelling together on a motorcycle and also drinking liquor in the field.

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 29.9.2023 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, **Shahid @ Kare** 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.

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 :- 20.11.2023

m.a.