

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10816 of 2023

Appellant :- Pravesh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Manish Kumar Tripathi

Counsel for Respondent :- G.A., Nikil Pathak

Hon'ble Mayank Kumar Jain, J.

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

Counter affidavit filed today by learned counsel for the respondent no. 2 is taken on record.

Heard learned counsel for the appellant, learned counsel for respondent no. 2, 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 impugned order dated 22.08.2023 passed by learned Special Judge (SC/ST Act)/Additional Session Judge, Ghaziabad in bail application no. 5618 of 2023, arising out of Case Crime No. 108 of 2023, under Sections 302, 201, 34 I.P.C., Section 3(2)(V) of SC/ST Act, Police Station Bhojpur, District Ghaziabad.

There is an allegation in the F.I.R against the appellant that on 16.05.2023 at around 8:00 p.m, son of the informant namely Rahul left his house but did not return during the entire night. On 17.05.2023 the informant came to know that a dead body has been recovered and sent for postmortem. The body was identified to be of Rahul by his elder son. Rahul was sitting with so many persons in a cart on 16.05.2023, thereafter, present appellant along-with co-accused has taken him on their motor-cycle. It was apprehended that appellant and another persons committed murder of Rahul.

Learned counsel for the appellant submits that appellant is innocent and has been falsely implicated in this case. There is no evidence against the appellant on record. Inquest proceedings and the postmortem report was conducted since the body was not

identified by that time, thereafter, the elder brother of the deceased identified the dead body to be of his brother Rahul. There is no evidence of last seen together of the appellant with the deceased. Thereafter, confessional statement of the appellant has been recorded in which he accepted to commit murder of Rahul. The appellant is languishing in jail since 20.05.2023 having no criminal history 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. assisted by learned counsel for the respondent no. 2 vehemently opposed the prayer for bail and submitted that independent witnesses Kapil, Jaypal, Sohan Pal, Tarachand had seen the deceased in company of the appellant last time before his death. On the pointing out of the present appellant clothes of the deceased as well stone which was used in murder was recovered.

Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the active participation of the appellant in the commission of crime, I do not find it fit case for bail.

Since the trial court has passed the impugned order after appreciating the evidence available on record, there is no occasion to interfere with the finding of fact recorded by the trial court, hence, the present criminal appeal lacks merit and deserves to be dismissed.

Accordingly, the criminal appeal is dismissed.

Order Date :- 29.11.2023

PS