

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10932 of 2023

Appellant :- Ishak Alias Gajju Miya

Respondent :- State of U.P. and Another

Counsel for Appellant :- Amir Khan

Counsel for Respondent :- G.A., Chandra Prakash Misra

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, learned counsel for the informant, learned Additional Government Advocate for the State of U.P. and perused the 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 09.10.2023 passed by the Additional Sessions Judge/Special Judge, SC/ST Act, Kushi Nagar at Padrauna in bail application no. 2677 of 2023, under Sections 306 of IPC and under Section 3(2) (V) of SC/ST Act, Police Station Kotwali Hata, District Kushi Nagar.

The case of the prosecution as per the F.I.R is that the alleged incident took place at around 1:00 a.m in the night of 21.10.2020. The appellant along-with other persons formed a gang and were having enmity with the family of the informant. Prior to this incident a panchayat were called at the house of appellant on 18.10.2020 where the appellant along-with other co-accused used abusive language and caste related abuses to the informant and his son. On the evening of 21.10.2020 at about 5:00 p.m, elder son of the informant was going to deposit Rs. 24,000/- at brick klin. On the way the accused persons committed marpeet with him and snatched money from him. He was also given threat to life. In respect of aforesaid incident son of the informant dialled 112 but no action was taken by the police against the appellant. When the younger son of the informant namely Sailesh was sleeping in the under constructed house, the appellant along-with co-accused came there. Sailesh was beaten and strangulated to death. The appellant and other persons with the intention of destroying the evidence of murder hanged the body of Sailesh from a tree. The informant was at her house, when she heard the alarm she went to the place of occurrence and found that the appellant and other

persons were fleeing from the place of occurrence.

Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in this case. In postmortem report, the cause of death is noted as due to asphyxia antemortem (hanging). The informant moved an application but the name of the appellant was not disclosed in that application which is contrary to the F.I.R. Dr. Uma Shankar Nayak who conducted the postmortem stated that he did not find any injury on the person of deceased at the time of postmortem. There is no eye witness who had seen the appellant committing murder of the deceased and hanging him from the tree. The F.I.R. has been lodged after a delay of two years and three months and no explanation is offered for such delay. A photograph is brought on record which indicates that the body of Sailesh got down in the presence of the appellants. It is vehemently argued that during inquest proceedings father and brother of the deceased were nominated as 'panch' but they did not disclose anything at the time of inquest. There is specific mention in the inquest report that no injury was observed on the person of deceased. It is also submitted that there is no evidence against the appellant that he ever instigated the deceased to commit suicide while charge-sheet has been submitted under Section 306 I.P.C. The appellant is languishing in jail since 26.08.2023, 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 informant vehemently opposed the prayer for bail and submitted that so far as delay in filing the application under Section 156(3) is concerned it is well explained in the F.I.R. itself. It is also submitted in this case that the investigation was conducted by the Investigating Officer more or less in favour of the accused and except the appellant all the other accused have been exonerated.

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 criminal appeal is allowed and the impugned order rejecting the bail application of the appellant is set-aside.

Let appellant, **Ishak Alias Gajju Miya**, 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 they are accused, or suspected, of the commission of which they are 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 :- 11.12.2023

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