

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11271 of 2023

Appellant :- Sunil Kumar @ Rana

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shailendra Kumar Singh, Ashok Kumar Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

List revised.

No one has put in appearance on behalf of informant/opposite party no.2.

Sri Arvind Kumar, learned A.G.A. submits that notice upon the informant/opposite party no.2 has been duly served.

Heard learned counsel for the appellant, 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 the bail rejection order dated 21.04.2023 passed by learned Special Judge (SC/ST Act), Bijnor in Bail Application No. 1191 of 2023, arising out of Case Crime NO. 95 of 2019, under Sections 302, 307, 34 IPC and Sections 3 (2) 5 of SC/ST Act, Police Station Badhapur, District Bijnore.

As per prosecution version informant Sompal Singh has lodged first information report alleging that on 21.04.2019 when his father Bulaki Singh alongwith Mahaveer and Firoji were returning from the market, some unknown persons slapped to Firoji and fired upon them as a result of which Bulaki Singh died on the spot and Mahavir and Firoji got seriously injured.

Learned counsel for the appellant argued that the appellant was not named in the F.I.R. and he has been falsely implicated in this case. It further submitted that name of the applicant disclosed by co-accused Rohit during his confessional statement. It is further

submitted that co-accused Rohit from whom a revolver used in the crime is said to have been recovered, has already been granted bail by the co-ordinate Bench of this Court vide order dated 06.11.2019 passed in Criminal Appeal No. 4306 of 2019. Apart from it identically placed co-accused Vineet @ Vikki has already been granted bail by this Court vide order dated 04.07.2023 passed in Criminal Appeal No. 5500 of 2023. It is further submitted that nothing incriminating material has been recovered from the possession or on the pointing out of the appellant. It is further submitted that informant Sompal, injured Mahavir and Firoji were examined as PW1, PW2 and PW3 respectively before the trial court and they did not corroborate the prosecution story as they did not identify the appellant. Criminal history of the appellant has been explained in para-23 of the affidavit filed in support of the bail application. Lastly, it is submitted by learned counsel for the appellant that there is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant is languishing in jail since 20.05.2019 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. opposed the prayer for bail by contending that on the basis of C.D.R. co-accused Rohit was arrested and name of appellant was disclosed by him. However, he could not dispute the aforesaid factual aspects of the matter.

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 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."

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

Let the appellant, namely, **Sunil Kumar @ Rana** 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 he is accused, or suspected, of the commission of which he is 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 :- 7.12.2023

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