

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1200 of 2020

Appellant :- Madan @ Kallu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sukh Deo Singh, Avinash Chandra Pandey, Paritosh Shukla, Yogesh Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. Case is taken up in the revise call.
2. As per the office report dated 10.04.2023 notice has already been served upon the opposite party No.2 but till date neither any counsel has appeared nor any counter affidavit has been filed on her behalf.

3. On 19.09.2023, this Court has passed the following order:-

"As per Office Report dated 10.04.2023, notice has already been served upon opposite party no.2, but till date neither anyone has put in appearance nor any counter affidavit has been filed on behalf of opposite party No.2.

As a last opportunity two weeks and no more time is allowed to the opposite party No.2 to file counter affidavit. Three days, thereafter is allowed to learned counsel for the appellant to file rejoinder affidavit.

Put up this case on 11.10.2023."

4. Today when the case is taken up, there is no one present on behalf of opposite party No.2 neither any counter affidavit has been filed, as such, it appears that opposite party No.2 is not interested in contesting this case. Since the matter pertains to bail and learned counsel for the appellant presses urgency in the matter, therefore, this Court has no other option but to proceed for final arguments to decide the present appeal.

5. Heard learned counsel for the appellant, Sri Ashok Kumar Singh, learned A.G.A-I for the State and perused the entire record.

6. This Criminal Appeal under Section 14-A (ii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has

been preferred against the impugned order dated 05.10.2020 passed by learned Special Judge, SC/ST Act, Sultanpur, in Bail Application No.1630 of 2020, whereby the bail application of the appellant has been rejected.

7. Learned counsel for the appellant submits that the appellant is innocent and has falsely been implicated in the present case due to enmity and village party bandi. The appellant was not named in the F.I.R. The F.I.R. was lodged by one Dhanpati, wife of late Shivilal, who is alleged to be resident of Ramnagar, Police Station Kotwali Nagar, District Sultanpur and is the mother of the deceased. He further submits that as per prosecution case it was informed that a dead body was lying in the field and there were injuries on neck and private part of the deceased. The prosecution story in brief is that the son of the informant went to ease himself on 15.11.2019 at about 7:30 P.M. in the field but when he did not return, the family members started searching him, thereafter, his dead body was found in a field with injuries on neck and private parts then the present F.I.R. was lodged against unknown persons on 16.11.2019.

8. Learned counsel for the appellant further submits that on the information of the informant, the appellant was arrested on 17.11.2019 and in his confessional statement, he stated the he was having illicit relation with the wife of the deceased, but since deceased was raising objection, as a result, the appellant decided to kill him. He also stated that when the said incident was taking place, his elder brother, namely-Sanjay Yadav @ Nate was keeping a watch so that no one could come on the place of incident. He further submits that it has been alleged that there was extra marital affair between the wife of the deceased and the appellant but there is nothing on record to demonstrate this fact.

9. Learned counsel for the appellant further submits that in the statement of the informant, it has been stated that his son was accused in another rape case and was in jail for some time and the assailant may be some other person. The occurrence is based upon circumstantial evidence and during investigation no positive evidence has been collected against the appellant. He further submits that it is a case of circumstantial evidence and the chain of evidence is totally broken. The police has also failed to complete the chain of evidence to connect the appellant in the present crime.

10. Learned counsel for the appellant further submits that the deceased was living separately and was done to death by some unknown person. The appellant alongwith other co-accused

persons have been falsely implicated on their own confessional statement, which was taken by the police. He further submits that the charge-sheet was filed in a mechanical manner without considering the evidence on record. The recovery of weapon used was also made by the police. There is no motive to kill the deceased.

11. Learned counsel for the appellant while placing reliance upon the judgment of Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra : 1984 Cri. L.J. 178** has argued that no one had seen the commission of crime, there is no connecting link to indicate the involvement of appellant in the commission of crime, it is a case of circumstantial evidence and the chain of evidence is totally broken, the police has also failed to complete the chain of evidence to connect the appellant in the present crime. He further submits that the appellant is not involved in the present crime, thus he should be released on bail.

12. Learned counsel for the appellant further submits that the appellant is in jail since 17.11.2019 and has by now done a substantial period of incarceration. In support of his argument, he has placed reliance of Hon'ble Apex Court judgment in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the appellant on conditions as may be imposed by the District and Sessions Judge, Faridabad."

13. Learned counsel for the appellant has also placed reliance of Hon'ble Apex Court judgment in the case of **Takht Singh Vs. State of Madhya Pradesh, 2001 (10) SCC 463**, and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under:-

"2. The appellants have been convicted under Section 302/149, Indian Penal Code by the learned Sessions Judge and have been sentenced to imprisonment for life. Against the said conviction and sentence their appeal to the High Court is pending. Before the High Court application for suspension of sentence and bail was filed but the High Court rejected that prayer indicating therein that the

applicants can renew their prayer for bail after one year. After the expiry of one year the second application was filed but the same has been rejected by the impugned order. It is submitted that the appellants are already in jail for over 3 years and 3 months. There is no possibility of early hearing of the appeal in the High Court. In the aforesaid circumstances the applicants be released on bail to the satisfaction of the learned Chief Judicial Magistrate, Sehore. The appeal is disposed of accordingly."

14. Learned counsel for the appellant further submits that ratio of law applicable in above those cases is also applicable in the case of the appellant, therefore, the appellant may be enlarged on bail by this Court sympathetically.

15. Learned counsel for the appellant further submits that similarly circumstanced and identically placed co-accused, Rekha, wife of the deceased and Sanjay Yadav @ Nate, brother of the appellant have already been granted bail by the Coordinate Bench of this Court vide order dated 17.12.2020 and 29.07.2020 passed in Bail No. 2927 of 2020 and Criminal Appeal No.320 of 2020, respectively and the case of the appellant is not on the worse footing than that of the co-accused, who have been granted bail, therefore, the appellant may also be enlarged on bail by this Court.

16. Several other submissions regarding legality and illegality of the allegations made in the F.I.R. have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused, have also been touched upon at length. It has been assured on behalf of the appellant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. The appellant undertakes that in case he is released on bail he will not misuse the liberty of bail and will cooperate in trial. It has also been pointed out that appellant has no criminal history, this fact has been mentioned at para-23 of the affidavit filed in support of the bail application. The appellant is in jail since 17.11.2019 and that in the wake of heavy pendency of cases in the courts, there is no likelihood of any early conclusion of trial.

17. Learned A.G.A. opposed the prayer for bail of the appellant and submits that it is only in the confessional statement of the appellant and co-accused, the name of the appellant came into light but he does not dispute this fact that the appellant has already undergone substantial period of detention and the present prosecution is based on circumstantial evidence.

18. After perusing the record in the light of the submissions

made at the Bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence, considering that the appellant was not named in the F.I.R.; no one has seen the appellant committing the alleged crime; there is no independent eye witness who has seen the appellant or any other co-accused person committing the alleged crime; there is no motive of killing the deceased; the deceased was a good friend of the appellant and the appellant is residing separately to some other place and the deceased was residing to some other place; there appears force in the argument of learned counsel for the appellant that no one had seen the commission of crime, there is no connecting link to indicate the involvement of appellant in the commission of crime, it is a case of circumstantial evidence and the chain of evidence is totally broken, the police has also failed to complete the chain of evidence to connect the appellant in the present crime; the appellant is not involved in the present crime and similarly circumstanced and identically placed co-accused, Rekha, wife of the deceased and Sanjay Yadav @ Nate, brother of the appellant have already been granted bail by the Coordinate Bench of this Court vide order dated 17.12.2020 and 29.07.2020 passed in Bail No. 2927 of 2020 and Criminal Appeal No.320 of 2020, respectively and considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the cases of **Kamal (supra)**, **Takht Singh (supra)**, and **Dataram Singh vs. State of U.P. and another, reported in (2018) 3 SCC 22**, this Court is of the view that the appellant may be enlarged on bail.

19. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 05.10.2020 passed by the learned Special Judge, S.C./S.T. Act, Sultanpur in Bail Application No.1630 of 2020, arising out of F.I.R. No.1281 of 2019 under Sections 302, 201, 120B and 34 I.P.C. and Section 3(2)(v) of SC/ST Act, Police Station-Kotwali Nagar, District-Sultanpur is hereby **set aside** and **reversed**.

20. Let the appellant, **Madan @ Kallu** be released on bail in the F.I.R. No.1281 of 2019 under Sections 302, 201, 120B and 34 I.P.C. and Section 3(2)(v) of SC/ST Act, Police Station-Kotwali Nagar, District-Sultanpur with the following conditions:-

(i) The appellant shall furnish a personal bond with two sureties each of like amount to the satisfaction of the court concerned.

(ii) The appellant shall appear and strictly comply following terms of bond executed under section 437 sub section 3 of Chapter- 33 of Cr.P.C.:-

(a) The appellant shall attend in accordance with the conditions of the bond executed under this Chapter.

(b) 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, and

(c) 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.

(iii) The appellant shall cooperate with investigation /trial.

(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 court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi) In case, the appellant misuses the liberty of bail during trial, in order to secure his presence, proclamation under section 82 Cr.P.C. is issued and the appellant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(vii) The appellant shall remain present, 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 Cr.P.C. If in the opinion of the trial court 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 against him in accordance with law.

21. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the prayer for bail and must not be construed to have any reflection on the ultimate merit of the case.

22. The trial court is also directed to expedite the trial of the aforesaid case by following the provisions of Section 309 Cr.P.C., strictly without granting any unnecessary adjournments to the parties, in case there is no other legal impediment.

Order Date :- 24.11.2023

Piyush/-