

Court No. - 15

Case :- CRIMINAL APPEAL No. - 875 of 2023

Appellant :- Karan Yadav

Respondent :- State Of U.P. Thru. Secy. Home, Lko. And Another

Counsel for Appellant :- Pravin Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Sri Pravin Singh, learned counsel for the appellant as well as the learned A.G.A. for the State and perused the entire record.

2. This Criminal Appeal under Section 14-A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 16.02.2023 passed by learned Special Judge, S.C./S.T. Act, Pratapgarh, in S.T. No. 735 of 2020, Bail Application No.3849 of 2022, Case Crime No. 52 of 2020, under Section 304 I.P.C. and Section 3(2)(v) of the S.C./S.T. Act, Police Station Kandhai, District Pratapgarh, whereby the bail application of the appellant has been rejected.

3. Learned counsel for the appellant submits that the appellant is innocent and he has been falsely implicated in the present case. The appellant is a labour working in the brick-kiln of the opposite party No. 2 and he had gone to the brick-kiln to take his labour-charges from the owner. There is no role of the appellant in hitting the deceased. The entire story has been cooked by the opposite party No. 2 to save his skin, even though he is not the eye-witness of the alleged incident. It was stated in the first information report that the appellant and deceased were fighting after taking liquor and thereafter the deceased fell down and died while he was being taken to the

hospital by his parents. It has further been submitted that in the statement of the father of the deceased he has stated that two persons, namely the appellant and one Buddhhe, were fighting with his son and, thus, there is a contradiction in the first information report, wherein only the appellant has been shown hitting the deceased and in the statement of the father, wherein two persons were shown hitting the deceased. Next, he has placed much emphasis on the statement of wife of the deceased Suman, who has stated that the appellant and one Buddhhe were fighting with her husband. The husband fell down and thereafter she took the husband to the hospital, where he was declared 'dead'.

4. It is also argued by the learned counsel that in the statement of one Ravi, who claims to be uncle of the deceased, submitted that the deceased worked at the brick-kiln with him. He also submits that two persons were fighting with the deceased and the deceased fell down on the ground and when they reached on the spot, the persons ran away. At that time, the deceased was alive and during treatment he expired. The counsel submits that this witness is not the eye-witness of the alleged incident and he came on the spot after the incident. Another witness Sunil, who also worked with the deceased on the said brick-kiln, also said that two persons were fighting with the deceased and when they reached on the spot, the persons who were fighting with the deceased ran away and the deceased fell on the ground, but he was alive and he was taken to hospital and during the course of treatment he died.

5. Learned counsel for the appellant submits that as per the postmortem report there were two injuries shown (1) Compression of right side of occipital region with swelling present of size 6x4 cm. And 6cm from right ear, and (2) LW

present on all five fingers dorsal side of left foot, and the cause of death is 'Shock and haemorrhage due to antemortem injury. Viscera was preserved for chemical analysis', but it has not been specified by any of the witnesses that the appellant had killed the deceased or he had caused injuries to the deceased, thus, the learned counsel submits that none of the witnesses, even the father of the deceased has not stated that the above injuries were caused only by the appellant, thus, he submits that even though the incident was caused by more than one person, thus, it is not a case that due to the injury caused by the appellant the deceased had died. Only general allegations have been levelled against the two persons- appellant and one Buddhie and no weapon or article has been recovered from the possession of the appellant or on his pointing out. Whatsoever the recovery has been made, that was made by the Police, thus, he submits that no case is made out against the appellant. The appellant was falsely implicated on the instance of the owner/opposite party No. 2 and the appellant was falsely implicated. As such, allegations against the appellant are false and, therefore, the appellant is entitled for bail.

6. Several other submissions in order to demonstrate the falsity of the allegations made against the appellant 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. It has also been pointed out that the accused is not having any criminal history and he is in jail since 23.02.2020 and that in the wake of heavy pendency of cases in

the Court, there is no likelihood of any early conclusion of trial.

7. Learned counsel for the applicant further submits that the appellant is in jail since 23.2.2020 and has by now undergone a substantial period of detention. In support of his contention, learned counsel for the applicant has placed reliance on 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."

8. Learned counsel for the applicant 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."

9. Whereas, Sri Ashok Kumar Singh, learned A.G.A. has opposed the prayer for bail and submits that as the appellant

alongwith other person namely Buddhhe was involved in the crime, due to this reason the deceased died, thus, the bail-application of the appellant be rejected, but he could not dispute the submissions made by the learned counsel for the appellant.

10. After hearing the arguments as advanced by the learned counsel for the parties, there appears force in the arguments advanced by the learned counsel for the appellant that it was stated in the first information report that the appellant and deceased were fighting after taking liquor and thereafter the deceased fell down and died while he was being taken to the hospital by his parents. It has further been submitted that in the statement of the father of the deceased he has stated that two persons, namely the appellant and one Buddhhe, were fighting with his son and, thus, there is a contradiction in the first information report, wherein only the appellant has been shown hitting the deceased and in the statement of the father, wherein two persons were shown hitting the deceased. In the statement of wife of the deceased Suman it has been stated she took the husband to the hospital; it has not been specified by any of the witnesses that the appellant had killed the deceased or he had caused injuries to the deceased; it is not a case that due to the injury caused by the appellant the deceased had died. Only general allegations have been levelled against the two persons-appellant and one Buddhhe and no weapon or article has been recovered from the possession of the appellant or on his pointing out; Whatsoever the recovery has been made, that was made by the Police, and further 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 case of **Kamal (supra)**, **Takht Singh (Supra)** and **Dataram Singh vs. State of UP and another**, reported in **(2018) 3 SCC 22**, this Court is of the view that the learned court below has failed to appreciate the material

available on record. The order passed by the court below is liable to be set aside.

11. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 16.02.2023 passed by learned Special Judge, S.C./S.T. Act, Pratapgarh, in S.T. No. 735 of 2020, Bail Application No.3849 of 2022, Case Crime No. 52 of 2020, under Section 304 I.P.C. and Section 3(2)(v) of the S.C./S.T. Act, Police Station Kandhai, District Pratapgarh, is hereby set aside and reversed.

12. Let the appellant, **Karan Yadav** be released on bail in the Case Crime No. 52 of 2020, under Section 304 I.P.C. and Section 3(2)(v) of the S.C./S.T. Act, Police Station Kandhai, District Pratapgarh, 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.

13. The trial court is also directed to expedite the trial of the aforesaid case within 1 year from today by following the provisions of Section 309 Cr.P.C., strictly without granting any unnecessary adjournment to the parties, in case there is no other

legal impediment or stay by higher court.

14. 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.

(Shamim Ahmed, J.)

Order Date :- 28.11.2023

A.Nigam