

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1099 of 2023

Appellant :- Brajkishore Bhatt

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

Counsel for Appellant :- Vivek Bhatt, Ramesh Kumar Dubey

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. The case is taken up in the revised call.
2. Counter affidavit filed by the learned A.G.A. and rejoinder affidavit filed in reply thereto are on the record.
3. As per the office report dated 26.01.2023 notice issued to the opposite party No. 2 has been served, but till date neither any counsel has appeared nor any counter affidavit has been filed on his behalf. It appears that opposite party No. 2 is not interested to contest the case.
4. The present matter pertains to bail, therefore, this Court has no option but to proceed to hear the present appeal finally.
5. Heard learned counsel for the appellant, Shri Vivek Bhatt, the learned A.G.A. for the State-opposite party No. 1 and perused the record.
6. The present criminal appeal under Section 14-A(2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant, Brij Kishore Bhatt, against the impugned order dated 25.05.2022 passed by the court of learned Second Additional Sessions Judge/ Special Judge, SC/ST Act, Lakhimpur Kheri in Bail Application No. 133 of 2022, arising out of Case Crime No. 203 of 2022, under Sections 302, 201 I.P.C. read with Section 3(2)5 of Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Kotwali Gola, District Kheri, whereby bail application of appellant has been rejected.

7. Learned counsel for the appellant submitted that appellant is innocent and he has been falsely implicated in the present case. No such incident took place as alleged by the prosecution.

8. Learned counsel for the appellant further submits that as per the F.I.R. dated 10.04.2022, the prosecution case is that the brother of the complainant, namely, Arjun (deceased) was untraceable since 05.04.2022 and the missing report of the same was lodged by his wife Kanti Devi on 06.04.2022, who is also co-accused in this case. It is further alleged in the F.I.R. that the appellant, who is alleged to be lover of the wife of the deceased Kanti Devi, has an illicit relation with Kanti Devi and he was doing pairvi of the land dispute of the sister of Kanti Devi and the case was decided in her favour. Thereafter, the co-accused Kanti Devi and Brij Kishore were asking the deceased Arjun to sell that land and give half of sale-consideration to the present appellant Brij Kishore Bhatt, but the deceased was not ready for the same, due to which the present appellant alongwith his nephew Vinod Sharma and the co-accused Kanti Devi killed Arjun and threw his body in the canal.

9. Learned counsel for the appellant further submits that the name of the appellant has been mentioned in the F.I.R., without being any material against him, only on the basis that he was having illicit relation with the wife of the deceased Kanti Devi. It has also been submitted that the complainant on 11.04.2022 in his statement under Section 161 Cr.P.C. has submitted that one Gulzari had seen the deceased Arjun going along with the appellant and one other person. It is further submitted that even Gulzari has not specifically stated in his statement recorded

under Section 161 Cr.P.C. that the appellant has committed the alleged crime. Recovery of a knife on the pointing out of the appellant has been shown by the Police, whereas no such knife was even kept by the appellant. There is no independent eye-witness, who has seen the appellant committing the murder or throwing his body in the canal nor anyone has taken the name of the appellant.

10. Learned counsel for the appellant has further submitted that it is a case of circumstantial evidence. The witnesses produced are not the eye-witnesses. The chain of circumstances is not complete and is broken. The prosecution is totally failed to complete the chain of the incident and the involvement of the appellant in the present case.

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 further argued that no one had seen the commission of crime, there is no connecting link to indicate the involvement of applicant 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 applicant in the present crime.

12. Learned counsel for the appellant further submits that the complainant in his statement dated 6.2.2023, recorded before the Court below, has denied that the co-accused Kanti Devi, who is also sister-in-law of the complainant, was having any illicit relation with Brij Kishore (appellant herein) and there was no dispute between Kanti Devi, wife, and the deceased, her husband, regarding giving share of sale-consideration of land of sister of Kanti Devi to the present appellant, thus, the complainant has not supported the case as per the averment in

the first information report. The appellant has nothing to do with the share of the land property of sister of the co-accused Kanti Devi. The entire allegations are false and fabricated, and have been made only to give colour to the gravity of the alleged offence. It was further submitted that the prayer for bail of present appellant may be considered by this Court sympathetically and the impugned bail-rejection order passed by the Trial Court may be set aside and reversed.

13. Learned counsel for the appellant further submitted that co-accused, Vinod Sharma, who was also named in the F.I.R. has already been granted bail by a coordinate Bench of this Court vide order dated 10.07.2023 passed in Criminal Appeal No. 1481 of 2022. It is further submitted that the case of the present appellant is not on the worse footing than that of the aforesaid co-accused, thus, the bail application of the present appellant may also be allowed by this Court sympathetically and the impugned bail rejection order passed by the trial court may be set aside.

14. 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 she is ready to cooperate with the process of law and shall faithfully make herself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon her. It has also been pointed out that the accused has no previous criminal history and is in jail since 12.04.2022 and that in the wake of heavy pendency of cases in the court, there is no likelihood of any early conclusion of trial.

15. On the other hand, learned AGA has opposed the prayer for grant of bail but has not disputed the fact that the informant/complainant had lodged the FIR against the co-accused persons, including the present appellant, and the basis of giving names of the appellant and other co-accused persons could be seen from the statement of the complainant himself given under Section 161 Cr.P.C., wherein he has submitted that one Gulzari had seen the deceased Arjun going along with the co-accused Brij Kishore and one other person, but he has not specifically taken the name of appellant. Even Gulzari in his statement recorded under Section 161 Cr.P.C. has not taken the name of the appellant.

16. 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, nature of evidence, period of detention already undergone, unlikelihood of early conclusion of trial and also in absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that there is no eye witness to the incident, the name of the appellant has been mentioned in the FIR without there being any material against him, the complainant on 11.04.2022 in his statement under Section 161 Cr.P.C. has submitted that one Gulzari had seen the deceased Arjun going along with the appellant and one other person, but he has not taken the name of appellant. Even Gulzari in his statement recorded under Section 161 Cr.P.C. has not taken the name of the appellant and except that, no other incriminating evidence has been found against the appellant during the investigation; further 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 applicant 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 applicant in the present crime; further the complainant in his statement dated 06.02.2023 recorded before the court below has denied that appellant was having illicit relations with deceased's wife Kanti Devi and there was no dispute between Kanti Devi and the deceased regarding giving share of sale consideration of land of sister of Kanti Devi to the appellant, thus, the complainant has become hostile, thus there appears force in the argument of learned counsel for the appellant that there is a bleak chance of conviction of appellant; further co-accused, Vinod Sharma, who was also named in the F.I.R. has already been granted bail by a coordinate Bench of this Court vide order dated 10.07.2023 passed in Criminal Appeal No. 1481 of 2022, thus, there appears also force in the argument of learned counsel for the appellant that the case of the present appellant is not on the worse footing than that of the aforesaid co-accused 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 cases of **Sharad Birdhichand Sarda (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 trial court has failed to appreciate the material available on record. Thus, the impugned bail rejection order passed by the trial court is liable to be set aside.

17. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 20.07.2022 passed by the court of learned Second Additional Sessions Judge/ Special Judge, SC/ST Act, Lakhimpur Kheri in Bail Application No. 133 of 2022, arising out of Case Crime No. 203 of 2022, under Sections 302, 201 I.P.C. read with Section 3(2)5 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

Police Station Kotwali Gola, District Kheri, is hereby set aside and reversed.

18. Let the appellant, **Brij Kishore Bhatt**, be enlarged on bail in Case Crime No. 203 of 2022, under Sections 302, 201 I.P.C. read with Section 3(2)5 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Kotwali Gola, District Kheri, 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 her counsel. In case of her absence, the trial court may proceed against her 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 her in accordance with law.

19. 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.

20. 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 :- 2.11.2023

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