

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1409 of 2022

Appellant :- Bhagwandeem

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

Counsel for Appellant :- Dinesh Kumar Shukla

Counsel for Respondent :- G.A.,Shailendra Kumar

Hon'ble Shamim Ahmed,J.

Heard Shri Dinesh Kumar Shukla, learned Counsel for the appellant, Shri Sumit Kumar, Advocate holding brief of Shri Shailendra Kumar, learned Counsel for opposite party No.2, Shri Hari Shankar Bajpai, learned A.G.A-I for the State and perused the entire material placed on record.

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 29.04.2022 passed by learned Special Judge SC/ST Act, Gonda in Bail Application No.743/2022 arising out of Case Crime No.0292/2021 under Sections 302, 201, 34 I.P.C. and Section 3(2)(5) of SC/ST Act, relating to Police Station-Khargupur, District-Gonda, whereby the bail application of the appellant has been rejected.

Learned counsel for the appellant submits that the appellant has falsely been implicated in the instant case due enmity and village party bandi. No such incident took place as claimed by the prosecution. The F.I.R. in the present case has been lodged after an inordinate delay of one day. As per the prosecution case a complaint was given by Kishnawati, wife of the deceased that her husband, namely-Santosh went out of his house on 06.12.2021 to drive E-Rickshaw, when he did not arrive in the evening, the complainant called him but his phone was switched off and thereafter on 08.12.2021 a dead body was found near Village Itahiya Navijot in a sugarcane field, when the complainant saw the dead body, she identified it as the dead body of her husband and alleged that somebody has killed him and thrown his body in the sugarcane field.

Learned counsel for the appellant further submits that the postmortem was conducted and as per the postmortem report the external injuries were incised wound over front of neck and trachea, esophagus and large blood vessels of neck incised and

the immediate cause of death was reported to be shock and hemorrhage due to antemortem injury.

Learned Counsel for the appellant further submits that the complainant who is wife of the deceased has not taken the name of the appellant and the F.I.R. was lodged against unknown persons. He further submit that nobody has seen the appellant committing the alleged crime and there is no independent eye witness, thus, the appellant may be released on bail and the present appeal may be allowed.

Learned A.G.A-I as well as learned Counsel for the opposite party No.2 have vehemently opposed the prayer for bail and submits that the complainant who is the wife of the deceased was cousin sister of the appellant and she ran away with the deceased and they both were living as husband and wife, the family members of the complainant were not happy with their relationship and they were annoyed with the fact that a girl of their family is living with a person who belongs to lower caste. On the date of incident the family members of the appellant took lift on the E-Rickshaw of the deceased and when the E-Rickshaw reached in a deserted place, they killed the husband of the complainant and threw his body in a sugarcane field, this fact has also been confirmed by the uncle of the deceased, namely-Ram Avtar in his statement recorded under Section 161 Cr.P.C. It is further stated that he last saw the deceased with the appellant, namely-Bhagwandeem, Chhedi Ram and Radhika Verma, who sat on the E-Rickshaw of the deceased. He had further stated that the appellant and the family members of the complainant were not happy with the relation of the complainant with deceased. The statement of uncle of the deceased, namely-Ram Avtar is annexed as Annexure No.8 to the counter affidavit filed on behalf of the State-opposite party No.1.

Learned A.G.A-I as well as learned Counsel for the opposite party No.2 further submit that the complainant in her statement recorded under Section 161 Cr.P.C. had clearly stated this fact that the family members of the complainant were not happy with the marriage of complainant with deceased and they were searching for right time and place for harming the husband of the complainant. The statement of complainant recorded under Section 161 Cr.P.C. is annexed as Annexure No.3 to the counter affidavit filed on behalf of the State-opposite party No.1. They further submit that the recovery of *gadansa* was made on the pointing out of co-accused, namely-Radhika Verma and she clearly stated this fact that, she alongwith other co-accused persons killed the deceased with the use of *gadansa*, thus, there is nothing on record to show that the present appellant has been

falsely implicated in this case. They further submit that there is no illegality in the impugned order, hence the present appellant is not entitled for bail. Therefore, the instant appeal being devoid of merits deserves to be dismissed.

Considering the facts and circumstances of the case and also considering the nature of allegations, arguments advanced by learned counsel for the parties, nature and manner of commission of offence and evidence regarding the complicity of appellant and also going through the statements of the complainant and uncle of the deceased, namely-Ram Avtar recorded under Section 161 Cr.P.C., in which they clearly stated this fact that the family members of the complainant were not happy with the marriage of the complainant with deceased and they were annoyed with the fact that a girl of their family is living with a person who belongs to lower caste; there appears force in the argument of learned A.G.A-I as well as learned Counsel for opposite party No.2 that the uncle of the deceased, namely-Ram Avtar has clearly stated that he last saw the deceased with the appellant, namely-Bhagwandeem, Chhedi Ram and Radhika Verma, who sat on the E-Rickshaw of the deceased and he had further stated that the appellant and the family members of the complainant were not happy with the relation of the complainant with deceased and they were keen to harm the husband of the complainant. The statement of uncle of the deceased, namely-Ram Avtar is annexed as Annexure No.8 to the counter affidavit filed on behalf of the State-opposite party No.1, thus, prima facie commission of offence appears to be made out against the appellant, accordingly, this Court is of the view that no case for bail, at this stage, is made out. Therefore, there is no illegality in the impugned order dated 29.04.2022.

Accordingly, the instant criminal appeal is **dismissed**.

However, keeping in view the fact that the appellant is languishing in jail since 12.12.2021, the learned trial court concerned is directed to get the trial concluded within one year from today with utmost expedition, without granting any unnecessary adjournments to the parties, in case there is no other legal impediment.

It is made clear that the trial of the aforesaid case shall be conducted without being influenced by any observation made herein above which are confined to the disposal of the instant criminal appeal.

Order Date :- 5.12.2023

Piyush/-