

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1565 of 2023

Appellant :- Sohraab

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

Counsel for Appellant :- Dharendra Pratap Singh, Abdul Samad, Sonu Gupta

Counsel for Respondent :- G.A., Syed Mohammad Abid

Hon'ble Shamim Ahmed, J.

1. Heard Sri Abdul Samad, learned counsel for the appellant, Sri S.M. Abid, learned counsel for the opposite party no.2 as well as Sri Ashok Kumar Singh, 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 01.05.2023 passed by learned Special Judge, S.C./S.T. Act, Raibareli, in Bail Application No.1544 of 2023, Case Crime No. 50 of 2023, under Section 306, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Inhauna, District Amethi, 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, only with the intention to give some other direction to the prosecution case, which was lodged by the opposite party No. 2 against the in-laws of the deceased, namely, husband Vikas, father-in-law Jagpal, mother-in-law, brother-in-law and sister-in-law, total five in numbers, bearing F.I.R./Case Crime No. 0050 of 2023, dated 26.3.2023, under Sections 498A, 304B, I.P.C. and Section 3/4, Dowry Prohibition Act. The Name of the appellant does not find place in the first information report nor he is relative of the deceased or the complainant. Learned counsel further submits that even from bare perusal of the first information report it is apparent that whatever the allegations are levelled in the F.I.R., that are levelled against the persons, who are named in the first information report regarding demand of dowry and causing cruelty. There is no any version against the appellant. The statement of the brother of the deceased

namely Sudheer was recorded by the investigating officer and first time he (brother of the deceased) has taken the name of the appellant that he used to talk on mobile with the deceased and mobile number was given, whereas the appellant's counsel denied that the said SIM belongs to the appellant.

4. Learned counsel for the appellant further submits that it is a ploy of the investigating officer, only with the intention to falsely implicate the appellant in the present case and to exonerate the main culprit of the case, in-laws of the deceased, against whom F.I.R. under Section 498A, 304B, I.P.C. and Section 3/4, Dowry Prohibition Act was registered. Apart from the brother of the deceased, no one is said to have taken the name of the appellant. The learned counsel has further submitted that the ingredients of Section 306, I.P.C. are missing from bare reading of the statement of the brother of the deceased. In fact, the appellant has no concern with the deceased nor he ever was in her touch. The entire allegation against the appellant are false and fabricated, thus, it is a case of false implication, lodged only with the intention to get some financial aid from the State Exchequer, as the complainant belongs to 'SC/ST' category and the appellant is a Member of forward class of the society.

5. 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.

6. Several other submissions in order to demonstrate the falsity of the allegations made against the appellant have also been brought forth before this Court regarding illegality and infirmity of the prosecution case and it has been highlighted before this Court that the appellant is in detention since 01.04.2023 and he has already undergone a substantial period of detention, without any fault on his part. It is further submitted that the case lies on

circumstantial evidence, as there is no independent eye-witness who has seen the alleged incident. Even though the said statement was recorded after the death of the victim. Further, it is stated that the appellant has no any previous criminal history. This fact has been stated in para-21 of the affidavit filed in support of the bail-application.

7. Sri Syed Mohd. Abid, learned counsel for the opposite party no.2 submits that the investigating officer has totally turned the prosecution case in other direction, only with the intention to save the main culprit against whom the first information report was lodged, namely, husband, father-in-law, mother-in-law, brother-in-law and sister-in-law and has recorded statement, which was never given by the brother of the deceased. He also submits that the brother of the deceased never gave the said statement before the investigating officer and the version is totally changed, thus, he submits that the investigation has been done in a wrong direction.

8. The learned A.G.A. Sri Ashok Kumar Singh, submits that as the name of the appellnant has been taken in the statement of the brother of the deceased, thus, *prima facie*, offence is made out, thus, the appeal deserves to be be rejected.

9. 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 in the absence of any convincing material to indicate the possibility of tampering with the evidence, this court finds force in the statement of the learned counsel for the appellant that the appellant has been implicated in the present case, only with the intention to give some other direction to the prosecution case, which was lodged by the opposite party No. 2/complainant against the in-laws of the deceased; name of the appellant does not find place in the first information report nor he is relative of the deceased or the complainant; even from bare perusal of the first information report it is apparent that whatever the allegations regarding demand of dowry and causing cruelty are levelled in the F.I.R., that are levelled against the persons, who are named in the first information report; there is no any version against the appellant in the F.I.R.; in the statement of the brother of the deceased

namely Sudheer, first time he (brother of the deceased) has taken the name of the appellant that he used to talk on mobile with the deceased and mobile number was given, whereas the appellant's counsel denied that the said SIM belongs to the appellant; it appears to be a ploy of the investigating officer, only with the intention to falsely implicate the appellant in the present case and to exonerate the main culprit of the case, against whom F.I.R. under Section 498A, 304B, I.P.C. and Section 3/4, Dowry Prohibition Act was registered; apart from the brother of the deceased, no one is said to have taken the name of the appellant; the ingredients of Section 306, I.P.C. are missing from bare reading of the statement of the brother of the deceased; the impugned F.I.R. appears to have been lodged only with the intention to get some financial aid from the State Exchequer, as the complainant belongs to 'SC/ST' category and the appellant is a Member of forward class of the society; no one is said to have seen the commission of crime nor there is any 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 in detention since 01.04.2023 and he has already undergone a substantial period of detention; the case lies on circumstantial evidence, as there is no independent eye-witness who has seen the alleged incident; even though the said statement was recorded after the death of the victim; the appellant has no any previous criminal history, 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 **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 court below has failed to appreciate the material available on record. The order passed by the court below is liable to be set aside.

10. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 01.05.2023 passed by learned Special Judge, S.C./S.T. Act, Raibareli, in Bail Application No.1544 of 2023, Case Crime No. 50 of 2023, under Section 306, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Inhauna, District Amethi, is hereby set aside and reversed.

11. Let the appellant, **Sohraab** be released on bail in the Case Crime No. 50 of 2023, under Section 306, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Inhauna, District Amethi, 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.

12. 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.

13. 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 :- 19.12.2023

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