

Court No. - 15

Case :- CRIMINAL APPEAL No. - 261 of 2021

Appellant :- Kailash Prajapati

Respondent :- State Of U.P. And Anr.

Counsel for Appellant :- Abhishek Srivastava, Arjun Singh
Kalhans

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

(Criminal Misc. Bail Application No. 24028/2021)

Rejoinder affidavit filed today in the Court on behalf of the appellant is taken on record.

Heard Sri Abhishek Srivastava, learned counsel for the applicant/appellant and Sri Ashok Kumar Srivastava, learned A.G.A. for the State and perused the record.

This is the second bail application moved on behalf of the applicant/appellant-Kailash Prajapati which has been preferred against the judgment and order dated 14.10.2020 passed by Special Judge, SC/ST Act, Lucknow in Second Bail Application No.4930/2020; Kailash Prajapati vs. State of U.P. & Anr. arising out of F.I.R No.548/2019 under Section 302 and 307 I.P.C. and Section 3(2)(V) of SC/ST Act, Police Station-Ashiyana, District-Lucknow.

The first bail application was rejected vide a detailed order dated 03.03.2020 passed in Criminal Appeal No.2409 of 2019 by the Coordinate Bench of this Court. The order dated 03.03.2020 is being reproduced as under:

"Rejoinder affidavit filed by learned counsel for the appellant is taken on record.

This appeal has been filed against the order dated 19.11.2019, passed by the learned Additional Sessions Judge/Special Judge, SC/ST Act, Lucknow, in Bail Application No.7736 of 2019, moved by the appellant in Case Crime No.548 of 2019, under Sections 302, 307 IPC and Section 3 (2) SC/ST Act, P.S. Ashiyana, District Lucknow.

As per the office report, notice has been served on private respondents but none has put appearance.

FIR in this case has been lodged to the effect that on 05.08.2019 in

the evening. The present appellant alongwith one unknown had inflicted injury with iron rod upon the complainant and his wife Madhu. Due to which the complainant and Madhu had sustained injury and she had died. FIR was promptly lodged on 05.08.2019 at 20:20.

As per post mortem report, the deceased was having five injuries on different parts of her body wherein injury No.1 and 2 were on the right side of her head and right parietal region whereas injury No.3 was on the back of the head above 8 c.m. from the right ear and other two injuries No.4 and 5 on the head and occipital region.

It is stated by the learned counsel for the appellant that the entire prosecution story is doubtful as the complainant has not undergone any medical examination and there is no injury report of complainant on record. It is also stated that as per the prosecution story the complainant was taken to Lok Bandhu Hospital, Lucknow for treatment but from the Lok Bandhu Hospital, Lucknow a report was given that complainant had never undergone any treatment at the said Hospital.

Opposing the bail, learned AGA has stated that the report given by Lok Bandhu Hospital, Lucknow is not correct. As per the prosecution papers received from KGMU Trauma Center, Lucknow, the complainant was referred to KGMU Trauma Center, Lucknow from Lok Bandhu Hospital, Lucknow for further treatment and a report has been obtained from KGMU Trauma Center, Lucknow that on 05.08.2019 complainant was referred from Lok Bandhu Hospital, Lucknow to KGMU Trauma Center, Lucknow for further treatment. This report of KGMU Trauma Center, Lucknow reflects that the initial treatment of the complainant had taken place at Lok Bandhu Hospital, Lucknow, so the report of the Lok Bandhu Hospital, Lucknow is not correct.

Looking into the facts and circumstances of the case it is evident that as per the FIR, occurrence had taken place in the evening on 05.08.2019 and FIR was lodged promptly, appellant is named accused. There are serious injuries on the deceased. Recovery has also been alleged from pointing out of the appellant.

In view of the fact, the order passed by the trial Court rejecting the bail of the appellant is fully justified.

The appeal has got no force and is dismissed."

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

Learned A.G.A. for the State submits that there appears no good ground averred in the affidavit filed in support of the bail application for interference by this Court to release the applicant/appellant on bail, thus, he submits that the present bail application may be rejected and consequently, the appeal may be dismissed.

In the present second bail application the appellant/applicant has not taken any fresh ground or any other ground for interference in the earlier order dated 03.03.2020 passed by the Coordinate Bench of this Court, nor the learned counsel for the appellant/applicant is able to justify non involvement of the applicant/appellant in commission of crime. The crime is heinous in nature.

Considering the rival submissions of the parties, the nature of allegations made in the F.I.R., the nature and gravity of the offence, the complicity of accused-applicant and all other facts and circumstances of the case and considering the fact that the deceased was having five injuries on different parts of her body wherein injury No.1 and 2 were on the right side of her head and right parietal region whereas injury No.3 was on the back of the head above 8 c.m. from the right ear and other two injuries No.4 and 5 on the head and occipital region and learned counsel for the appellant/applicant is unable to justify non involvement of the applicant/appellant in commission of crime, the crime is heinous in nature, thus, I do not find any good ground to release the applicant/appellant on bail.

The order dated 14.10.2020 does not suffer from any irregularity or illegality. Thus, the impugned order dated 14.10.2020 does not need any interference by this Court.

In view of the above, the bail application of the appellant/applicant is **rejected**.

Consequently, the appeal is **dismissed**.

However, keeping in view the fact that the appellant is languishing in jail since 06.08.2019, the learned trial court concerned is directed to get the trial concluded within six months 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 :- 28.11.2023

Piyush/-