

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1824 of 2023

Appellant :- Lav Kush

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

Counsel for Appellant :- Sarjoo Ram,Aklavya

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Sri Sarjoo Ram, learned counsel for the appellant, Sri Veer Bhan 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 10.03.2023 passed by learned Special Judge, S.C./S.T. Act, Pratapgarh, in Bail Application No. 4007 of 2022, Case Crime No. 247 of 2021, under Sections 302, 307, 34, I.P.C. and Section 3(1)Va, 3(1)V, of S.C./S.T. Act, 1989, Police Station Kotwali City, 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. It has been further submitted that the appellant is not named in the first information report. It has been also stated none of the prosecution witnesses has taken the name of the appellant, however, after 62 days of the alleged incident the injured has allegedly taken the name of the appellant showing his complicity in the alleged incident alongwith other co-accused persons. The injured was not admitted in any hospital, even then, his statement has been recorded after more than two months of the alleged incident, which makes the statement of

the injured doubtful and unbelievable, and only with the intention to falsely implicate the appellant alongwith other co-accused persons. It was further argued by learned counsel for the appellant that even though the injured has made general allegations against the appellant and other named accused persons. Apart from this there is no direct or circumstantial evidence against the present appellant. He further submits that it is a case of circumstantial evidence. There is no independent eye-witness who has seen the appellant committing the alleged crime or was present at the time of the alleged incident. In support of his arguments, learned counsel for the appellant has placed reliance upon the judgment of Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharshttra : 1984 Cri. L.J. 178** and 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 other similarly circumstanced co-accused persons, namely Jai Prakash Yadav, Rahul Pal, child-abuser A Satyam Yadav and another co-accused, who is minore 'V', were granted bail vide order dated 19.8.2021, 17.2.2022, 24.1.2023 and 2.11.2023 in Criminal Appeal Nos. 1004 of 2021 and 1059 of 2021, Criminal Revision Nos. 889 of 2021 and 486 of 2022, thus, it was argued that the case of the present appellant is not on the worst footing than that of the co-accused, who have already been granted bail by the Co-ordinate Benches of this Court, thus, the bail-application of the present appellant may also be considered by this Court sympathetically and he should also be released on bail.

4. 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 15.11.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

5. Sri Veer Bhan Singh, learned counsel for the opposite party no.2 has also not disputed this fact that the other co-accused persons, who have been assigned similar role, have already been granted bail by Coordinate Benches of this Court and the role of the present appellant is also identical, but he submits that as there is a cognizable offence against the appellant, the appellant is not entitled to get any relief by this Court.

6. Learned A.G.A. for the State is in agreement with the arguments advanced by the learned counsel for the opposite party No. 2 that the appellant is not entitled to get any relief from this Court and his appeal deserves to be dismissed.

7. 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 and considering the fact that the appellant is not named in the first information report; none of the prosecution witnesses has taken the name of the appellant; after 62 days of the alleged incident the injured has allegedly taken the name of the appellant showing his complicity in the alleged incident alongwith other co-accused persons; the injured was not admitted in any hospital, even then, his statement has been recorded after more than two months of the alleged incident, which makes the statement of the injured doubtful and unbelievable; the injured has made general allegations against the appellant and other named accused persons; there is no direct or circumstantial evidence against the present appellant; it is a case of circumstantial evidence; there is no independent eye-witness who has seen the appellant committing the alleged crime or being present at the time of the alleged incident; 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; other similarly circumstanced co-accused persons, namely Jai Prakash Yadav, Rahul Pal, child-abuser A Satyam Yadav, and Vivek and another co-accused, who is minor 'V', have been granted bail by Coordinate Benches of this Court; the case of the present appellant is not on the worst footing than that of the co-accused, who have already been granted bail, 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), 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.

8. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 10.03.2023 passed by learned Special Judge, S.C./S.T. Act, Pratapgarh, in Bail Application No.4007 of 2022, Case Crime No. 247 of 2021, under Sections 302, 307, 34, I.P.C. and Section 3(1)Va, 3(1)V, of S.C./S.T. Act, 1989, Police Station Kotwali City, District Pratapgarh, is hereby set aside and reversed.

9. Let the appellant, **Lav Kush** be released on bail in the Case Crime No. 247 of 2021, under Sections 302, 307, 34, I.P.C. and Section 3(1)Va, 3(1)V, of S.C./S.T. Act, 1989, Police Station Kotwali City, 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.

10. 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.

(Shamim Ahmed, J.)

Order Date :- 17.11.2023

A.Nigam