

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1912 of 2023

Appellant :- Nanke

Respondent :- State Of U.P. Thru. Prin. Secy. Home U.P. Civil Secrett. Lko.

Counsel for Appellant :- Sanjay Kumar Sharma

Counsel for Respondent :- G.A., Amit Kumar Awasthi, Anand Kumar Shukla

Hon'ble Shamim Ahmed, J.

1. The appellant-applicant has filed rejoinder-affidavit, which is taken on record.
2. Heard learned counsel for the appellant, Sri Anand Kumar Shukla, learned counsel for the opposite party no.2 as well as Ms. Charu Singh, learned A.G.A. for the State and perused the entire record.
3. 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 11.05.2023 passed by learned Special Judge, S.C./S.T. Act, Bahraich in Bail Application No. 773/12A/2023, Nanke v. State of U.P., Case Crime No. 0143 of 2023, under Sections 323/504/506/304 I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Payagpur, District Bahraich, whereby the bail application of the appellant has been rejected.
4. Learned counsel for the appellant submits that the appellant is innocent and he has been falsely implicated in the case due to enmity and village party-bandi. It has also been submitted that the appellant was not present on the spot at the time of the alleged incident, and as he is relative of the other co-accused, his name has falsely been implicated in the present case.
5. Learned counsel for the appellant submits that as per the version of the first information report (F.I.R.), due to some dispute of land the appellant alongwith other named co-accused, named in the F.I.R., started raising construction on the land of the complainant by digging it. When the complainant stopped them, the accused persons started beating her with *mukka, thappad, laat-ghoonsa and lathi danda*. When mother-in-law of the complainant Raj Kumari tried to save her, the accused persons did beat her also. The F.I.R. was lodged under Sections 323/504/506, I.P.C and Sections 3(1)(da) and 3(1)(dha), Scheduled Castes and the Scheduled Tribes (Prevention

of Atrocities) Act, 1989 bearing Case Crime No. 0143 of 2023.

6. The injured Rajkumari was brought to the hospital and as per the injury-report four injuries were shown and all the injuries were simple in nature as per the Doctor's advice. Thereafter the injured died. Thereafter Section 304, I.P.C. was inserted by the investigating officer.

7. Learned counsel for the appellant submits that the postmortem on the body of the deceased was conducted and as per the postmortem report the cause of death is 'Myocardial Infraction', thus, as per the medical-report of the deceased, role of the appellant does not justify as per version of the F.I.R. Copy of the injury-report as well as the postmortem report are filed as Annexure Nos. 3 and 4 to the affidavit filed in support of the bail-application.

8. Learned counsel for the appellant further submits that as per the version of the F.I.R. four persons are shown beating the complainant, including the appellant, but no specific role or weapon has been assigned to the present appellant, thus, it is not case of the prosecution that due to beating by the appellant, Raj Kumari had sustained injuries and she succumbed to those injuries. Another injured namely Kalawati has also not specified any specific role to the appellant and only general role has been assigned to all the four accused persons, who have been named in the F.I.R., thus, the counsel submits that in absence of any specific role or weapon assigned to the present appellant it cannot be said that the death was caused due to the beating of the present appellant, thus, he submits that it is a case of false implication. Actually, the appellant was not present on the spot. Name of the appellant was taken only to give gravity to the alleged offence, as he is relative of the other named accused persons.

9. 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 6.4.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

10. Sri Anand Kumar Shukla, learned counsel for the opposite party No. 2 as well as the learned A.G.A. for the State have opposed the prayer for bail and submitted that there is an allegation against all the four named accused persons, including the appellant, who have badly beaten the injured Rajkumari, who has died, thus, prima facie, the offence is made. The appellant is not entitled to get any relief from this Court. The appeal deserved to be dismissed, but they have not disputed this fact that no specific role or weapon has been assigned to the appellant, only general role has been assigned to all the appellants and the postmortem report is not corroborated by the injury-report of the victim.

11. 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 injury report of the victim does not corroborate with her post-mortem report, no specific role or weapon has been assigned to the appellant, only general allegations have been assigned to all the named accused persons, including the appellant, 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 ***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.

12. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 11.5.2023 passed by learned Special Judge, S.C./S.T. Act, Bahraich in Bail Application No.773/12A/2023, Nanke v. State of U.P., Case Crime No. 0143 of 2023, under Sections 323/504/506/304 I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Payagpur, District Bahraich, is hereby set aside and reversed.

13. Let the appellant, **Nanke** be released on bail in the Case Crime No.0143 of 2023, under Sections 323/504/506/304 I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Payagpur, District Bahraich, 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.

14. The observations made hereinabove are confined only to disposal of the bail-application, and they have no concern with the merits of the case.

15. 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 :- 3.11.2023/A.Nigam