

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2420 of 2023

Appellant :- Ram Bux Rajput

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

Counsel for Appellant :- Vijay Prakash Srivastava

Counsel for Respondent :- G.A., Vijayendra Prakash Tripathi

Hon'ble Shamim Ahmed, J.

(C.M.A. No. 1 of 2023)

1. Heard Shri Vijay Prakash Srivastava, learned counsel for the accused-appellant as well as learned A.G.A. for the State and perused the 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 05.08.2023 passed by learned Special Judge, S.C./S.T. Act, Barabanki in Bail Application No. 3820 of 2023, Case Crime No. 0191 of 2023 under Sections 323, 306 I.P.C. and Section 3(2)(v), S.C./S.T. (P.A.) Act, 1989, Police Station- Haidergarh, District- Barabanki, whereby the bail application of the appellant has been rejected.

3. Learned counsel for the accused-appellant while pressing the appeal submits that the appellant has been falsely implicated in this case and he has not committed any offence, as claimed by the prosecution.

4. It is further submitted that a simple incident of maar-peet has been given the colour of abetment to commission of suicide by the deceased while the necessary ingredients as enumerated under Section 306 of the I.P.C. are not present in this case.

5. Elaborating further, it is submitted that in the first information report, it has been alleged that the appellant and co-accused Tribhuwan Rawat have assaulted the deceased in the night and the deceased had also sustained some injuries, however, he was highly intoxicated and was taken for medical examination. However, after treatment, he was kept in police

custody and no information of the same was given to the informant and on the next day, he came to know that the son of the informant has been done to death.

6. It is vehemently submitted that admittedly at the time of the incident, one Umesh Kumar was with the deceased and he in detail has stated the whole occurrence in his statement recorded under Section 161 Cr.P.C and the statement of this witness would reveal that the deceased was highly intoxicated (under the influence of alcohol) and was afraid of appellant and co-accused and when he was taken to police station, he was escorted by two police personnel for the purpose of his medical examination and when the police personnel had taken him (deceased) to the hospital, the deceased jumped off the motorcycle of the police personnel and fled away and on the next day, his dead body has been found hanging with a branch of a Neem tree at the outskirts of village Kaudhiya.

7. Highlighting the above facts, it is vehemently submitted on behalf of the appellant that to constitute an offence under Section 306 I.P.C., there has to be a nexus/ relation between the alleged act or omission of the accused persons with the commission of suicide by the deceased and the same connection/ abetment should be of the magnitude as defined under Section 107 of the Indian Penal Code, which is completely missing in this case and it appears that under the influence of alcohol, the deceased had committed suicide without there being any cogent reasons for the same.

8. It is also submitted that the co-accused Tribhuwan Rawat charged with similar allegations, has been released on bail vide order dated 27.10.2023 passed by a Coordinate Bench in Criminal Misc. Bail Application No. 10874 of 2023. From before the involvement of the appellant in this case, he was not having any criminal history and one case pertaining to Sections 323, 504 and 506 I.P.C and Section 3(2)(v), S.C./S.T. (P.A.) Act, 1989, has been slapped against the appellant in connection with this case. There is no apprehension that after being released on bail the appellant may flee from the course of law or may otherwise misuse the liberty.

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 13.06.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

10. Learned A.G.A., however, opposes the prayer of bail of the appellant on the ground that the appellant has committed an heinous offence and having regard to the material/evidence available against him, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the appellant.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that the deceased had committed suicide by hanging herself which is evident by the postmortem report of the deceased where a ligature mark has been found around his neck along with many other minor injuries pertaining to which the case of the prosecution is that in the night before the finding of the body of the deceased, a fight had taken place between the deceased and the appellant & co-accused, namely, Tribhuvan Rawat. The admitted case of the prosecution as is reflected from the statement of the star witness of this crime, namely, Umesh Kumar Rawat appears to be that the deceased was apprehending that he may be further assaulted by the appellant and co-accused persons and when he was being taken in police escort for medical examination, he jumped off the motorcycle of the police personnel and fled away and his dead body was found next morning hanging from a branch of the tree. The defence of the appellant appears to be that even if the case of the prosecution is admitted as it is, the necessary ingredients required for attraction of Section 306 I.P.C are patently missing in this case as there is no 'abetment' as defined under Section 107 of the Indian Penal Code and also that the deceased had committed suicide under the influence of the

alcohol. The appellant is in jail in this case since 13.06.2023 and criminal history of one case has been adequately explained. The presence of the appellant could be secured before the trial court by placing adequate conditions.

12. 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; having perused the record, it is reflected that the deceased had committed suicide by hanging herself which is evident by the postmortem report of the deceased where a ligature mark has been found around his neck along with many other minor injuries pertaining to which the case of the prosecution is that in the night before the finding of the body of the deceased; a fight had taken place between the deceased and the appellant & co-accused, namely, Tribhuwan Rawat; the admitted case of the prosecution, as is reflected from the statement of the star witness of this crime, namely, Umesh Kumar Rawat appears to be that the deceased was apprehending that he may be further assaulted by the appellant and co-accused persons and when he was being taken in police escort for medical examination, he jumped off the motorcycle of the police personnel and fled away and his dead body was found next morning hanging from a branch of the tree; the defence of the appellant appears to be that even if the case of the prosecution is admitted as it is, the necessary ingredients required for attraction of Section 306 I.P.C are patently missing in this case as there is no 'abetment' as defined under Section 107 of the Indian Penal Code and also that the deceased had committed suicide under the influence of the alcohol; the co-accused charged with similar allegations has been released on 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 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.

13. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 05.08.2023 passed by learned Special Judge, S.C./S.T. (P.A.) Act, Barabanki in Bail Application No. 3820 of 2023, Case Crime No. 0191/2023, under Sections 323, 306 I.P.C. and Section 3(2)(v), S.C./S.T. (P.A.) Act, 1989, Police Station- Haidergarh, District- Barabanki, is hereby set aside and reversed.

14. Let the appellant, **Ram Bux Rajput** be released on bail in the Case Crime No. 191 of 2023 under Sections 323, 306 I.P.C. and Section 3(2)(v), S.C./S.T. (P.A.) Act, 1989, Police Station- Haidergarh, District- Barabanki, 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.

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.

16. 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 :- 29.11.2023

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