

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2641 of 2023

Appellant :- Vimal Patel @ Vimal Verma

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

Counsel for Appellant :- Nijam Ahamad

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

List has been revised.

Heard Shri Nijam Ahamad, learned Counsel for the appellant, Shri Ashok Kumar Srivastava, learned A.G.A. for the State and perused the material placed on record.

As per office report dated 11.10.2023, 02.11.2023 and 28.11.2023 notice was issued to opposite party No.2 by R.P.A.D. but neither unserved notice nor acknowledgment due has been received, so far.

Service sufficient.

Today also, when the case is taken up, there is no one present on behalf of opposite party No.2 neither any counter affidavit has been filed, as such, it appears that opposite party No.2 is not interested in contesting this case. Since the matter pertains to bail and learned counsel for the appellant presses urgency in the matter, therefore, this Court has no other option but to proceed for final arguments to decide the present appeal.

This Criminal Appeal under Section 14-A (2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 25.08.2023 passed by the learned Special Judge, S.C./ S.T. Act, Pratapgarh in Bail Application No.1815 of 2023 arising out of F.I.R./ Case Crime No.214 of 2022, under Sections 147, 302, 120-B I.P.C. and Section 3(2)(v) S.C./ S.T. Act, Police Station Jethwara, District Pratapgarh, whereby the bail application of the appellant has been rejected.

Learned counsel for the appellant has submitted that the first information report has been lodged against the appellant on the basis of false and fabricated facts. The accused/ appellant is innocent who has been falsely implicated in this case due to

some ulterior reason. The first information report came to be lodged against four named and some unknown persons including the present appellant.

His further submission is that according to prosecution story, the nephew of the first informant was stated to have been taken away initially by the co-accused persons, namely, Vijay Verma, and Abhishek Chaurasia @ Podai. However, the first information report further states that in the same evening, the nephew of the first informant was mercilessly assaulted by the co-accused persons and some unknown persons including the present appellant by kicks, fists, danda and knife etc.

His next submission is that according to prosecution story, the injured was taken to hospital, where he succumbed to his injuries. He has also submitted that the first informant is not an eye witness and, in fact, there is no eye witness of the alleged incident.

His further submission is that the cause of the death of the deceased was reported to be shock & haemorrhage due to antemortem internal region injury. There were eleven antemortem injuries reported on the person of the deceased.

His next submission is that though there is no eye witness of the alleged incident, however, witnesses, namely, first informant/ Awadhesh Saroj, Mukesh Saroj, who is the brother of the deceased and Smt. Kanchan Devi, who is the sister of the deceased, have stated in their statements recorded under Section 161 Cr.P.C. that they were informed by the deceased, while he was alive, that on the date of alleged incident, he was assaulted by all the accused persons including the present appellant. However, learned counsel for the appellant submitted that the present appellant has not been assigned any specific role and no recovery of any incriminating article or weapon of assault has been made from his possession or on his pointing out. Therefore, his submission is that at this stage, it cannot be said that the present appellant is the author of fatal injury, which caused death of the deceased.

His further submission is that the accused/ appellant, who is innocent, is languishing in jail since 19.06.2023, who has no previous criminal history and co-Accused having similar role was granted bail in Cr. Appeal No.213 of 2023 vide order dated 06.04.2023.

His further submission is that in case, the appellant is enlarged on bail, he shall not misuse the liberty of bail and he shall also fully cooperate with the trial court in getting the trial concluded

expeditiously. He has further submitted that there is no possibility of the appellant to intimidate or pressurize the witnesses or any other persons acquainted with the facts of the present case.

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 19.06.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed. The impugned order dated 25.08.2023 passed by the learned Special Judge, S.C./ S.T. Act, Pratapgarh in Bail Application No.1815 of 2023 arising out of F.I.R./ Case Crime No.214 of 2022, under Sections 147, 302, 120-B I.P.C. and Section 3(2)(v) S.C./ S.T. Act, Police Station Jethwara, District Pratapgarh, deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that the accused/ appellant is named in the first information report, who has committed a heinous offence of murder of the deceased. Therefore, the accused/ appellant is not entitled to be enlarged on bail and the instant criminal appeal deserves to be dismissed. However, he has been unable to dispute the other factual submissions advanced by the learned counsel for the accused/ appellant.

Having heard the learned counsel for the appellant, learned A.G.A. for the State and upon perusal of record, it transpires that the first information report came to be lodged against four named and some unknown persons including the present appellant. The cause of the death of the deceased was reported to be shock & haemorrhage due to antemortem internal region injury. There were eleven antemortem injuries reported on the person of the deceased. The present appellant has not been assigned any specific role and no recovery of any incriminating article or weapon of assault has been made from his possession

or on his pointing out. There is nothing on record to suggest that the present appellant is the author of fatal injury which caused death of the deceased. The accused/ appellant is languishing in jail since 19.06.2023, who has no previous criminal history.

Considering the aforesaid overall facts and circumstance of the case, without commenting upon merits, this Court 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.

Accordingly, the appeal is allowed. Consequently, the impugned order dated 25.08.2023 passed by the learned Special Judge, S.C./ S.T. Act, Pratapgarh in Bail Application No.1815 of 2023 arising out of F.I.R./ Case Crime No.214 of 2022, under Sections 147, 302, 120-B I.P.C. and Section 3(2)(v) S.C./ S.T. Act, Police Station Jethwara, District Pratapgarh, is **set aside**.

Let the appellant, **Vimal Patel @ Vimal Verma** be released on bail in Case Crime No.214 of 2022, under Sections 147, 302, 120-B I.P.C. and Section 3(2)(v) S.C./ S.T. Act, Police Station Jethwara, District Pratapgarh number 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.

Order Date :- 29.11.2023

Piyush/-