

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2897 of 2022

Appellant :- Nanku Nishad @ Nanhkoo

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

Counsel for Appellant :- Vinod Kumar Pandey, Pramod Kumar

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Shri Pramod Kumar Verma, the learned counsel for the appellant as well as Shri Ashok Kumar Singh, the learned A.G.A. for the State-opposite party No. 1 and perused the entire record.

2. Learned A.G.A. has already filed the counter affidavit. In reply thereto, learned counsel for the appellant has filed the rejoinder affidavit. The same are available on record.

3. As per the office report dated 17.12.2022 notice has already been served personally upon the opposite party Nos. 2, 3 and 4, but till date neither any counsel has appeared on behalf of opposite party Nos. 2, 3 and 4 nor counter affidavit has been filed on their behalf.

4. Even today, when the case is taken up, none has appeared on behalf of the opposite party Nos. 2, 3 and 4 and counter affidavit has also not been filed. It appears that opposite party Nos. 2, 3 and 4 are not interested to file any counter affidavit.

5. In the above circumstances, as the matter pertains to bail this Court has no option but to proceed for final arguments to decide the present appeal.

6. The present criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 28.10.2022 passed by the court of Special Judge, S.C./S.T. (P.A.) Act, Sultanpur in Bail Application No. 3999 of 2022 (Nanku Nishad alias Nanhkoo v. State of U.P.), arising out of Case Crime No. 468 of 2022, under Sections 323/316 I.P.C. and Section 3 (2) (v) S.C./S.T. Act, Police Station Gosaiganj, District Sultanpur, whereby the bail application of the appellant has been rejected.

7. Learned counsel for the appellant submits that as per the prosecution case an F.I.R. has been lodged stating therein that

on 31.08.2022 at about 11.00 a.m., the son of the complainant, namely Neelesh with his cousin Shashi was returning from School to his house. The accused persons including the present accused/applicant started to beat him then the daughter of the complainant namely Anjali tried to save him then the accused persons also beat her who was pregnant due to which she received injuries on her abdomen and started to cry due to severe pain, thereafter she was taken to Community Health Centre, Semri where her unborn child had died due to the said injuries.

8. Learned counsel for the appellant further submits that as per version of the F.I.R. four persons were named in the F.I.R., but no one has been specified any specific role of hitting the victim Anjali on her stomach. General role has been assigned for all the four persons hitting on her stomach.

9. Learned counsel for the appellant further submits that as per post-mortem report of the dead child was conducted on 3.09.2022 and as per the opinion of the doctor there was one ante-mortem injury i.e. 9x 6 cm Hyperemic over skull (occipital) region present. On cutting of skull blood hematoma present in brain Paraclyma occipital lobe of brain and the cause of death was still birth of infant child.

10. Learned counsel for the appellant further submits that the statement of the complainant-Leelawati was recorded on 12.09.2022 in which she has not assigned any specific role either to the appellant or to the other co-accused persons. She has assigned general allegations to all the accused persons.

11. Learned counsel for the appellant further submits that the statement of the victim was also recorded in which she has also stated the same version, which was stated in the F.I.R. and she has not assigned any specific role of any of the named accused persons nor the present appellant. Thus in absence of any specific role or any specific action against the appellant, it cannot be said that the fetus died due to action of the appellant, thus the instant criminal appeal deserves to be allowed and the order dated 28.10.2022 passed by the court of Special Judge, S.C./S.T. (P.A.) Act, Sultanpur in Bail Application No. 3999 of 2022 (Nanku Nishad alias Nanhkoo v. State of U.P.), arising out of Case Crime No. 468 of 2022, under Sections 323/316 I.P.C. and Section 3 (2) (v) S.C./S.T. Act, Police Station Gosaiganj, District Sultanpur deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

12. Learned counsel for the appellant further submits that

accused/appellant is languishing in jail since 22.09.2022, who has no previous criminal history, and 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. 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.

13. 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 22.09.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

14. *Per contra*, learned A.G.A. has vehemently opposed the prayer by submitting that there is active participation of accused/appellant in the crime. 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.

15. 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, unlikelihood of early conclusion of trial and also in absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that as per version of the F.I.R. four persons were named in the F.I.R., but no one has been specified any specific role of hitting the victim Anjali on her stomach. General role has been assigned for all the four persons hitting on her stomach, there appears force in the argument of learned counsel for the appellant that the victim and the complainant in her statement have not assigned any specific role to any of the named accused persons nor the present appellant. Thus, in absence of any specific role or any specific action against the appellant, it cannot be said that the fetus died due to action of the appellant, further considering the fact that appellant is in jail since 22.09.2022 and has by now done a substantial period of detention 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, both the impugned orders passed by the trial court are liable to be set aside.

16. Accordingly, the appeal is **allowed**. Consequently, the order order 28.10.2022 passed by the court of Special Judge, S.C./S.T. (P.A.) Act, Sultanpur in Bail Application No. 3999 of 2022 (Nanku Nishad alias Nanhkoo v. State of U.P.), arising out of Case Crime No. 468 of 2022, under Sections 323/316 I.P.C. and Section 3 (2) (v) S.C./S.T. Act, Police Station Gosaiganj, District Sultanpur is hereby reversed and set aside.

17. Let the appellant, **Nanku Nishad alias Nanhkoo**, be enlarged on bail in Case Crime No. 468 of 2022, under Sections 323/316 I.P.C. and Section 3 (2) (v) S.C./S.T. Act, Police Station Gosaiganj, District Sultanpur 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 she is accused, or suspected, of the commission of which she 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 her 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 she 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 her 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 her in accordance with law.

18. The trial court is also directed to expedite the trial of the aforesaid case, within a period of one year from today, 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.

19. 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 :- 23.11.2023

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