

**Court No. - 13**

**Case :-** CRIMINAL APPEAL No. - 530 of 2023

**Appellant :-** Suraj Singh

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

**Counsel for Appellant :-** Ram Chandra Dwivedi, O.P. Tiwari

**Counsel for Respondent :-** G.A., Amitabh Singh Raikwar, Ashish Gupta, Babita Verma, Gyan Singh Chauhan, Prabal Singh Chauhan, Pradeep Kumar Kovid, Ravindra Pratap Trivedi, Sandhya Guha, Vikrant Singh Chauhan

**Hon'ble Saurabh Lavania, J.**

1. Heard learned counsel for the appellant, learned A.G.A. for the State and Shri Gyan Singh Chauhan, learned counsel for the respondent no. 2 and perused the records.

2. The present appeal has been filed under Section 14-A (2) of Scheduled Castes and Scheduled Tribes Act, 1989 against the impugned order dated 18.06.2022 passed by Special Judge, SC/ST Act, Unnao in Bail Application No. 1457 of 2022 arising out of F.I.R. No. 16 of 2022, under Sections - 364, 366, 376-D, 302, 201, 34, 323, 504, 506 I.P.C. and Section 3(2)(v) of SC/ST Act, Police Station - Kotwali, District - Unnao.

3. Learned counsel for the appellant has placed reliance on the judgment and order dated **20.07.2023**, Annexure No. RA-8 to the rejoinder affidavit dated 24.08.2023, whereby this Court allowed **Criminal Appeal No. 3075 of 2022** filed by co-accused Arun Kumar Singh @ Rajol Singh and enlarged the co-accused on bail. The relevant portion of the order dated 20.07.2023 reads as under:

*"3. The present criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant-Arun Kumar Singh @ Rajol Singh, against the impugned order dated 18.05.2022 passed by the court of learned Special Judge (S.C./S.T. Act)/ Additional District & Sessions Judge, Court No. 2, Unnao in Case Registration No. 1203 of 2022 (Arun Kumar Singh @ Rajol Singh vs. State of U.P.), arising out of Case Crime No. 16 of 2022, under Sections 364, 366, 201, 302, 376-D, 323, 504, 506, 34 I.P.C. read with Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, relating to Police Station- Kotwali, District- Unnao, whereby bail application of the*

*appellant has been rejected.*

*4. Learned counsel for the appellant submits that appellant is innocent and has falsely been implicated in the present case due to village rivalry and partybandi. No such incident took place as alleged in the F.I.R. The entire prosecution story as alleged has been made only with intention to defame the appellant and his family members in the society.*

*5. Learned counsel for the appellant further submits that the F.I.R. was lodged on 10.01.2022 regarding an incident dated 08.12.2021 under Sections 366, 323, 504, 506 I.P.C. and Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act with an inordinate delay of 29 days without any plausible explanation. As per the version of complainant her daughter Pooja, aged about 22 years had gone to give some money to one Chandni but she did not return back. The complainant also made allegation against the present appellant that he was regularly threatening and pressurizing her daughter to marry with him unless she will face dire consequences. It was also stated in the F.I.R. that when daughter of complainant did not return back then she started searching her but she did not found. Thereafter, statement of complainant under Section 161 Cr.P.C. was also recorded in which she has almost repeated the same version of the F.I.R. and further she stated that her daughter has been kidnapped by the present appellant along with his other associates.*

*6. Learned counsel for the appellant further submits that husband of complainant, namely, Mukesh Gautam, in his statement recorded under Section 161 Cr.P.C. has repeated the same version of his wife and has stated that appellant has kidnapped his daughter and when he asked the appellant he abused him by caste and his daughter is not yet recovered.*

*7. Learned counsel for the appellant submits that thereafter statement of friend of daughter of complainant, namely, Saba Qureishi was also recorded, in which she has clearly stated that she had not seen daughter of complainant with the appellant and she does not know which type of relation exists between the appellant and the daughter of complainant. One other friend of daughter of complainant, namely, Rinki in her statement has made allegations against the daughter of complainant that Pooja has taken sixty thousand rupees for allotment of a house, but neither she get any house nor Pooja returned her money. It was also stated by Rinki that Pooja is not a fair girl. Several other persons had also made allegations against Pooja.*

*8. Learned counsel for the appellant further submits that statement of witness, Roshni, was also recorded in which she has stated that Pooja had taken a loan of Rs. 20,000/- from her sister, Chandni and Pooja has also asked her to give her Rs. 10,000/- but she did not give her the money. Thereafter, she came to know that Pooja is missing.*

*9. Learned counsel for the appellant further submits that statement of Chandni was also recorded in which she has stated that she has given Rs. 20,000/- to Pooja, she has further stated that on 08.12.2021 Pooja informed her that she is coming to her house, but she did not come,*

*mother of Pooja was putting pressure upon her that she will take the name of appellant but she denied and said that she will not take the name of appellant. All these statements have been filed at page nos. 82 to 93 in the present appeal.*

*10. Learned counsel for the appellant further submits that it is a case of circumstantial evidence and on the suspicion name of present appellant has been taken in kidnapping of daughter of complainant.*

*11. Learned counsel for the appellant further submits that police was in search of Pooja and they received some information from reliable sources that one Suraj Singh is involved in this case and he was arrested by the police and in his statement first time the name of appellant came into picture that he along with the appellant killed Pooja and her dead body was buried by them behind the Ashram. The name of other persons were also taken by Vishnu Narayan Tiwari and Anil Kumar Gautam and they have also stated name of six persons, namely, Ashok Singh, Arun Kumar Singh @ Rajol Singh (present appellant), Sanjay Kumar, Suraj Singh, Vinodanand Mishra and Rinki Rawat were also involved in kidnapping and murder of Pooja.*

*12. Learned counsel for the appellant further submits that dead body of Pooja was dig out after one and half months and her blood sample was also sent for D.N.A. test to forensic lab, but no such report is on the record.*

*13. Learned counsel for the appellant further submits that none of the witness had seen the incident and they have been forced by the police to take the name of appellant. Even Suraj Singh was also forced by the police. Other co-accused have not stated that they have seen the appellant committing the alleged crime and only Anil Kumar Gautam and Vishnu Narayan Tiwari have stated that they have heard and seen about the conspiracy made by the appellant and Suraj Singh for committing the murder of Pooja.*

*14. Learned counsel for the appellant further submits that these statements were given on the pressure made by the police. It has further been argued that all the witnesses whose statements under Section 161 Cr.P.C. was recorded none of them had stated that they have seen the present appellant either along with Pooja or he is involved in committing her murder. Thus, it is a case of purely circumstantial evidence. In support of his arguments, the learned counsel for the appellant while placing reliance upon the judgment of Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra : 1984 Cri. L.J. 178 has further 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.*

*15. Learned counsel for the appellant further submits that there are more than 90 witnesses but till date not a single witness has been examined before the court below.*

*16. Learned counsel for the appellant further submits that the other*

co-accused, namely, Vinodanand Mishra, Sanjay Kumar and Ashok Singh, who are involved in the crime and were assigned similar role than that of the present appellant have already been granted bail by different coordinate Benches of this Court vide orders dated 17.10.2022 and 23.01.2023 passed in Criminal Appeal Nos. 1437 of 2022, 1227 of 2022 and 1319 of 2022 and the case of the present appellant is not on the worse footing than that of the aforesaid co-accused, who have been assigned similar and identical role and have been granted bail, thus, bail application of the appellant may be considered and he should be enlarged on bail by this Court sympathetically.

17. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the impugned order deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

18. 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 having criminal history one case into his credit which has been explained in para-16 of the affidavit filed in support of the bail application. It has further been submitted that appellant is in jail since 25.01.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

19. Per contra, Shri Bhaskar Mal, the learned A.G.A.-I as well as Shri Gyan Singh Chauhan, the learned counsel for the opposite party No. 2 have opposed the prayer for bail by submitting that there is active participation of appellant along with other co-accused in the crime and his name was taken by co-accused Suraj Singh. Therefore, the accused/ appellant is not entitled to be enlarged on bail and the instant criminal appeal deserves to be dismissed.

20. 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 all the witnesses whose statements under Section 161 Cr.P.C. was recorded none of them had stated that they have seen the present appellant either along with Pooja or he is involved in committing her murder; further there appears force in the submission of learned counsel for the appellant that no one had seen the commission of crime, there is no connecting link to indicate the involvement of applicant 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 applicant

*in the present crime; further there appears force in the submission of learned counsel for the appellant that none of the witnesses had seen the incident and they have been forced by the police to take the name of appellant, even Suraj Singh was also forced by the police and other co-accused have not stated that they have seen the appellant committing the alleged crime and only Anil Kumar Gautam and Vishnu Narayan Tiwari have stated that they have heard and seen about the conspiracy made by the appellant and Suraj Singh for committing the murder of Pooja, also not supported the case; there also appears force in the submission of learned counsel for the appellant that there are more than 90 witnesses but till date not a single witness has been examined before the court below and there is no hope that trial of the case will be concluded in near future; further other co-accused, namely, Vinodanand Mishra, Sanjay Kumar and Ashok Singh, who are involved in the crime and were assigned similar role than that of the present appellant have already been granted bail and the case of the present appellant is not on the worse footing than that of the aforesaid co-accused, further considering the fact that appellant is in jail since 25.01.2022 and has now by 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 cases of Sharad Birdhichand Sarda (supra) and 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 impugned order passed by the trial court is liable to be set aside.*

*21. Accordingly, the appeal is allowed. Consequently, the order dated 18.05.2022 passed by the court of learned Special Judge (S.C./S.T. Act)/ Additional District & Sessions Judge, Court No. 2, Unnao in Case Registration No. 1203 of 2022 (Arun Kumar Singh @ Rajol Singh vs. State of U.P.), arising out of Case Crime No. 16 of 2022, under Sections 364, 366, 201, 302, 376-D, 323, 504, 506, 34 I.P.C. read with Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, relating to Police Station- Kotwali, District- Unnao, is hereby reversed and set aside.*

*22. Let the appellant, Arun Kumar Singh @ Rajol Singh, be enlarged on bail....."*

4. Taking note of the aforesaid as also the fact of the present case, this Court finds that only against co-accused Arun Kumar Singh @ Rajol Singh, who has been enlarged on bail, the informant levelled allegations in the FIR and the appellant was subsequently implicated as co-accused as also the fact that the appellant has no criminal history and he has been languishing in jail since 11.02.2022 and before the trial Court total ninety nine witnesses have to be examined and that till date DNA report of body recovered after about two months from the alleged date of crime has not been filed before the trial Court, this

Court is of the view that the appellant is entitled to be released on bail, the impugned order dated 18.06.2022 passed by Special Judge, SC/ST Act, Unnao in Bail Application No. 1457 of 2022 arising out of F.I.R. No. 16 of 2022, under Sections - 364, 366, 376-D, 302, 201, 34, 323, 504, 506 I.P.C. and Section 3(2)(v) of SC/ST Act, Police Station - Kotwali, District - Unnao is liable to be set aside. Accordingly, it is hereby set aside.

5. Let appellant, **Suraj Singh** be released on bail in the aforesaid case crime number on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following additional conditions :-

(i) The appellant will cooperate with the prosecution during trial.

(ii) The appellant will not tamper with the evidence during trial.

(iii) The appellant will not pressurize/intimidate the prosecution witness(es).

(iv) The appellant shall not commit an offence.

(v) 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.

(vi) The appellant shall remain present before the trial court on each date fixed, either personally or through counsel.

(vii) The appellant will not seek any adjournment on the dates fixed for evidence when the witnesses are present in court.

(viii) The appellant shall remain present, in person, before the trial court on the dates fixed for recording of statement under Section 313 Cr.P.C.

6. As this order relates to enlargement of the appellant on bail, it is clarified that observations made in this order shall have no bearing on the merits of the case and the trial court shall not be influenced by any observation made in this order.

**Order Date :-** 16.5.2024/Mohit Singh/-