

Neutral Citation No. - 2024:AHC-LKO:61599

Court No. - 16

Case :- CRIMINAL APPEAL No. - 1838 of 2024

Appellant :- Akshay Kumar Yadav @ Akchhu

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

Counsel for Appellant :- Prashant Dubey, Pragati Tiwari

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard Shri Prashant Dubey, the learned counsel for the appellant as well as Shri Satendra Kumar Srivastava, the learned A.G.A. for the State-opposite party No. 1 and perused the entire record.

2. The present criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant-Akshay Kumar Yadav @ Akchhu against the impugned order dated 14.05.2024 passed by the Court of Special Judge/S.C./S.T. Act District Faizabad in Bail Application No. 919 of 2024 arising out of Crime No. 376/2021, under Sections 302, 201, 120-B I.P.C and Section 3(2) V S.C./S.T. Act, Police Station Kotwali Rudauli, District Ayodhya, whereby the bail application of the appellant has been rejected.

3. Learned counsel for the appellant submits that the appellant earlier had earlier filed Criminal Appeal No. 58 of 2022 against the order dated 04.12.2021 passed by the learned Special Judge, S.C./S.T. Act, Faizabad in Bail Application No. 1943 of 2021, arising out of Case Crime No. 0376 of 2021, under Sections 302, 201, 120-B I.P.C. and Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Kotwali Rudauli, District Faizabad, which was dismissed by this Court vide order dated 01.08.2023, thereafter the appellant filed second bail application No. 919 of 2024, which was rejected vide impugned order dated 14.05.2024 by the learned trial Court.

4. Learned counsel for the appellant submits that the complainant, Ram Nevaj, had lodged the present F.I.R. on 18.08.2021 alleging therein that on 13.08.2021, his son, Mahesh Kanaujiya, after participating in wrestling and kabaddi, came to his house at about 3:00 pm., thereafter, after some time on receiving a call on his mobile phone of someone, he told his mother he is going for some necessary work and will come in the morning and he went away from his motorcycle. Thereafter, on 16.08.2021 through social media he came to know that dead body of his son is lying in a Nallah, thereafter he reached that place where police informed him that recovered dead body has been sent to the postmortem house, where he identified dead body of his son.

5. Learned counsel for the appellant further submits that appellant is innocent and has falsely been implicated in the case. The F.I.R. was lodged in unknown, his name came into light in the confessional statement of co-accused, he was not present at the time of incident, he does not know the deceased even he has no concern with the affairs of co-accused-Seema Yadav and the deceased, he has been implicated in the case due to brother of co-accused, Seema Yadav. It has further been argued that there is neither any evidence against him, nor there is any recovery on his pointing out and nor there is eye witness of the incident.

6. Learned counsel for the appellant further submits that F.I.R. has been lodged after an inordinate delay without any plausible explanation. The deceased was missing since 14.08.2021 but the F.I.R. was lodged on 18.08.2021, dead body of the deceased was recovered on 16.08.2021, which fact came into knowledge of the complainant through social media on 16.08.2021, but thereafter, after two days, the F.I.R. has been lodged by the complainant after due consultation. The postmortem of the deceased conducted on 16.08.2021 and as per the postmortem report cause of death was found to be asphyxia probably as a result of ante mortem events of smothering. The injuries are not on the vital part. Viscera was preserved, but till date viscera report is not on the record.

7. Learned counsel for the appellant further submits that appellant is innocent and has falsely been implicated in the case. There is no direct evidence to connect the appellant in the crime. It is purely a case of circumstantial evidence and no one had seen that appellant had committed murder of complainant's son.

8. Learned counsel for the appellant further submitted that the entire prosecution story as alleged is false and fabricated, all the witnesses are interested witness, thus, there evidence is not believable.

9. Learned counsel for the appellant further submitted that there is no role of appellant in the alleged crime, therefore, he may be enlarged on bail by this Court sympathetically and the present appeal may be allowed.

10. Learned counsel for the appellant further submits that the name of the appellant was taken on the confessional statement of her real sister Seema Yadav, who has already been granted bail by co-ordinate Bench of this Court passed in Criminal Appeal No. 303 of 2022 vide order dated 17.05.2024. He further submits that she has been assigned the main role. Once the main accused has already been granted bail by this Court, the case of the appellant is better than that of co-accused Seema Yadav. He further submits that the other co-accused Satish Chandra Yadav and Bhanu Pratap Yadav were also granted bail by a co-ordinate Bench of this Court vide orders dated 06.02.2023 and 25.01.2024 passed in Criminal Appeal Nos. 2192 of 2021 and 57 of 2022 respectively. Thus all the accused against whom the allegation were levelled in the confessional statement were already granted bail by this Court, thus the case of the present appellant may also be considered sympathetically and the present appeal may be allowed.

11. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 21.08.2021, 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.

12. 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 21.08.2021 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

13. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 14.05.2024 passed by the Court of Special Judge/S.C./S.T. Act District Faizabad in Bail Application No. 919 of 2024 in Crime No. 376/2021, under Sections 302, 201, 120-B I.P.C and Section 3(2) V S.C./S.T. Act, Police Station Kotwali Rudauli, District Ayodhya deserve to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the 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, but has not disputed this fact that main accused, namely, Seema Yadav, who has already been granted bail by co-ordinate Bench of this Court passed in Criminal Appeal No. 303 of 2022 vide order dated 17.05.2024 and other co-accused Satish Chandra Yadav and Bhanu Pratap Yadav were also granted bail by a co-ordinate Bench of this Court vide orders dated 06.02.2023 and 25.01.2024 passed in Criminal Appeal Nos. 2192 of 2021 and 57 of 2022 respectively.

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 the name of the appellant was taken on the confessional statement

of her real sister Seema Yadav, who has been assigned main role, has already been granted bail by co-ordinate Bench of this Court passed in Criminal Appeal No. 303 of 2022 vide order dated 17.05.2024 and the other co-accused Satish Chandra Yadav and Bhanu Pratap Yadav were also granted bail by a co-ordinate Bench of this Court vide orders dated 06.02.2023 and 25.01.2024 passed in Criminal Appeal Nos. 2192 of 2021 and 57 of 2022 respectively. Thus all the accused against whom the allegation were levelled in the confessional statement were already granted bail by this Court and further considering the fact that appellant is in jail since 21.08.2021 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 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 impugned order passed by the trial court is liable to be set aside.

16. Accordingly, the appeal is **allowed**. Consequently, the order dated 14.05.2024 passed by the Court of Special Judge/S.C./S.T. Act District Faizabad in Bail Application No. 919 of 2024 arising out of Crime No. 376/2021, under Sections 302, 201, 120-B I.P.C and Section 3(2) V S.C./S.T. Act, Police Station Kotwali Rudauli, District Ayodhya is hereby **reversed** and **set aside**.

17. Let the appellant, **Akshay Kumar Yadav @ Akchhu**, be enlarged on bail in Crime No. 376/2021 under Sections 302, 201, 120-B I.P.C and Section 3(2) V S.C./S.T. Act, Police Station Kotwali Rudauli, District Ayodhya 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.

18. 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.

19. 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.

Order Date :- 06.09.2024

Arvind

(Shamim Ahmed,J.)