

Court No. - 12

Case :- CRIMINAL APPEAL No. - 51 of 2021

Appellant :- Manoj

Respondent :- State Of U.P. Thru. Secy. Home Deptt. Lucknow And Anr.

Counsel for Appellant :- Piyush Kumar Singh, Durga Prasad, Mohd.

Salman, Mukhtar Ahamad, Sonu Yadav

Counsel for Respondent :- G.A.

Hon'ble Saurabh Lavania, J.

1. Case called out.

2. Considering the Office Report dated 11.02.2021 regarding service of notice upon opposite party no.2, this Court finds that service of notice upon opposite party no.2 is sufficient. However, no one appeared on behalf of opposite party no.2 to oppose the present appeal. In this view of the matter, this Court proceeds to hear the instant appeal.

3. Heard learned counsel for the appellant and learned A.G.A. for the State.

4. The present appeal has been filed under Section 14-A (2) of Scheduled Castes and Scheduled Tribes Act, 1989 against the impugned order dated 07.09.2020 passed by Special Judge, SC/ST Act/Additional District & Sessions Judge, Court No.2, Unnao in Bail Application No.2120 of 2020, arising out of Crime No.173 of 2020, under Sections 364, 302, 201 I.P.C., Police Station Bighapur, District Unnao.

5. Pressing the present appeal and impeaching the order, under appeal, dated 07.09.2020, learned counsel for the appellant stated that the appellant and co-accused Sumit Patel have been falsely implicated in the instant case on account of previous enmity between the family of the appellant and co-accused as also the complainant.

6. It is also stated that the appellant was not present at the spot of alleged incident and his name was falsely taken. The first information report was lodged by the informant on 21.06.2021 alleging therein that on 19.06.2020 at about 06:00 P.M., father of the complainant was present in his agricultural field, at that time, the accused appellant alongwith one Sumit Patel, the co-accused, entered into the field of complainant and kidnapped his father and killed him as well as made the body disappeared. It is also stated in the F.I.R. that on 20.06.2020, a missing report was lodged.

7. 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.

8. It is further submitted that there is no witness of last scene to establish the case of the prosecution.

9. Further submission is that the recovery of fire arm shown by the prosecution on pointing out of the appellant and co-accused is completely bogus and there is no independent witness to the said recovery and further, that the recovery of fire arm from the open place itself creates doubt on the recovery made by the prosecution.

10. It is also stated delay in conclusion of trial is also one of the grounds for enlarging the accused on bail. In support of his submissions, learned counsel for the appellant has placed

reliance on a judgment of this Court dated 25.05.2022 passed in **Criminal Misc. Bail Application No. 2702 of 2022 (Akeel vs. State of U.P.)**.

11. It is further stated that the appellant is languishing in jail since 21.06.2020 and almost more than four years have elapsed and the trial has not concluded as yet. Before the trial court 17 witnesses have to be examined. Though before the trial court, the complainant has already been examined and his statement, recorded before the trial court, is on record as Annexure RA-2 to the rejoinder affidavit. In this aspect of the case, the conclusion of trial in near future is extremely bleak, as such, taking note of the period of incarceration as also other aspects, the appellant is entitled to be released on bail.

12. In regard to period of incarceration, learned counsel for the appellant has placed reliance on the judgment passed by the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeeb*** reported in ***AIR 2021 SCC 712*** and ***Paras Ram Vishnoi. Vs. The Director General Bureau of Investigation***, passed in ***Criminal Appeal No.693 of 2021 (Arising out of SLP (Crl.) 3610 of 2020)***, as per which, bail can be granted to those accused persons on the ground that there is no possibility to conclude the trial in near future and there is a long incarceration period of that accused. Relevant para-16 of the case of ***K.A. Najeeb (supra)*** is quoted below:-

"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released

pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

13. In the case of ***Paras Ram Vishnoi (supra)***, the Hon'ble Apex Court has observed regarding point of incarceration period and delay in trial. The relevant part of the said judgment is quoted below:-

"On consideration of the matter, we are of the view that pending the trial we cannot keep a person in custody for an indefinite period of time and taking into consideration the period of custody and that the other accused are yet to lead defence evidence while the appellant has already stated he does not propose to lead any evidence, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the trial court."

14. It is further stated that co-accused, namely, Sumit Patel has already been granted bail by this Court vide order dated 27.07.2023 passed in Criminal Appeal No.562 of 2021, as such, the appellant is also entitled to be released on bail on the ground of parity.

15. Thus, indulgence of this Court is required in the matter. As such, appellant, who is in jail since 21.06.2020 and having no criminal history, is entitled for bail and the impugned order is liable to be set aside and the appeal is liable to be allowed.

16. Learned A.G.A. vehemently opposed the prayer of the appellant, however, he could not dispute the above contentions made by the appellant's counsel.

17. Considered the arguments advanced by the learned counsel for the appellant-applicant, learned A.G.A., and gone through the contents of the appeal, impugned order, F.I.R., as well as statement of the complainant.

18. Upon due consideration of above facts and circumstances including that there is no witness of last seen, the recovery of fire arm from the open place which itself creates doubt on the

recovery made by the prosecution as also the period of incarceration and also keeping in view the fact that the trial of the case is not likely to be concluded in near future, this Court is of the view that the appeal has substance and it is accordingly, **allowed**.

19. Order dated 07.09.2020 passed by Special Judge, SC/ST Act/Additional District & Sessions Judge, Court No.2, Unnao in Bail Application No.2120 of 2020, arising out of Crime No.173 of 2020, under Sections 364, 302, 201 I.P.C., Police Station Bighapur, District Unnao is set aside.

20. Let appellant **Manoj**, be released on bail in the aforesaid case crime number on his furnishing personal bond of Rs.25,000/- 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.

Order Date :- 16.10.2024

Anand/-