

Court No. - 12

Case :- CRIMINAL APPEAL No. - 2362 of 2019

Appellant :- Anjani Sahu

Respondent :- State Of U.P. And Anr.

Counsel for Appellant :- Ashok Kumar Singh, Ashok Kumar Singh, Huzoor Alam Alvi, Rahul Kumar Singh, Rajendra Pratap Singh, Surendra Singh, Vinay Pratap Singh

Counsel for Respondent :- Govt. Advocate, Anil Kumar Akela

Hon'ble Saurabh Lavania, J.

1. Heard.

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 19.11.2019 passed by Special Judge, SC/ST Act, Lucknow in Bail Application No. 7917 of 2019 arising out of F.I.R. No. 220 of 2019, under Sections 302, 201, 506 I.P.C. and Section 3(2)(v) of SC/ST Act, P.S. Mohanlal Ganj, District Lucknow.

5. Vide order dated 23.05.2024, this Court allowed the Criminal Appeal No. 2370 of 2023 filed by co-accused Mohit Sahu and enlarged the co-accused on bail. The relevant portion of the order dated 23.05.2024 reads as under:

"3. The present appeal has been filed under Section 14-A (2) of Scheduled Castes and Scheduled Tribes Act, 1989 against the order dated 24.05.2023 passed by Special Judge, SC/ST Act, Lucknow in Bail Application No. 4209 of 2023 arising out of Case Crime No. 220 of 2019, under Sections- 302, 201, 506 I.P.C. and Section 3(2)(v) of SC/ST Act, P.S.- Mohanlal Ganj, District- Lucknow.

4. While pressing the instant appeal, learned counsel for the appellant submitted that the entire case of prosecution is based upon circumstantial evidence and the appellant having no criminal history is languishing in jail since 26.04.2019 and trial is not proceeding in the manner as required under the law including Section 309 Cr.P.C., as such, possibility of conclusion of trial is near future is bleak.

5. 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.

6. It is further stated that the statements of main witnesses of fact namely Ram Dulari (wife of deceased) and Vinod Kumar Rawat have already been recorded before the trial court, as such, there is no possibility to influence the witnesses of fact and also that of 14 other witnesses, who are formal in nature, as prosecution is not inclined to produce one witness of fact namely Deepak.

7. It is further stated that the appellant has been implicated in the instant case only on account of village party bandi.

8. It is further stated that as per the case setup in the FIR, the appellant threatened the informant and deceased (husband of informant) for dire consequences on account of the fact that the appellant wants to keep informant (wife of deceased) with him and with this intention, the appellant with the help of other co-accused murdered the husband of informant.

9. The story aforesaid is completely is false and concocted and it can be inferred from the statement of informant herself. According to statement of informant, when her husband did not return home, she called her nephew and kept searching him till around 2:30-3:00 in the night of 25/26.04.2019 and she also made a call to her brother Vinod to inform him that her husband had not returned home and in turn, Vinod told her that brother-in-law (Jija) had met him at Mohanlalganj crossing and on being asked, Jija told me that he would be going back to Mau with throne (Takhat) with Mohit and Anjani Sahu.

10. The aforesaid statement indicates that basic story in the FIR is completely false, as no prudent person in the aforesaid background of the case would accompany the person who intends to keep his wife.

11. In continuation, it is stated that a conjoint reading of examination-in-chief and cross examination of informant indicates that informant made call on the phone of her brother at about 11.00 in the night of 25.04.2019 and first part of this statement prima facie indicates that the informant called her brother after 3.00 A.M. on 26.04.2019.

12. It is further stated that other co-accused namely Atul Raidas and Moid @ Abdul Haq have already been released on bail by the court concerned vide order 04.07.2019. In these circumstances, the impugned order dated 24.05.2023 is liable to be set-aside and the appellant is entitled to be released on bail and the appeal is liable to be allowed.

13. Learned A.G.A. as also learned counsel for the opposite party No. 2 vehemently opposed the prayer of the appellant, however, they could not dispute the above contentions made by the appellant's counsel.

14. Upon due consideration of the facts and circumstances of the case

including the arguments advanced by the learned counsel for the appellant, learned A.G.A. and going through the contents of the appeal, impugned order, F.I.R., as well as other relevant documents and the story setup in the FIR and also the period of incarceration and 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.

15. Order dated 24.05.2023 passed by Special Judge, SC/ST Act, Lucknow in Bail Application No. 4209 of 2023 arising out of Case Crime No. 220 of 2019, under Sections- 302, 201, 506 I.P.C. and Section 3(2)(v) of SC/ST Act, P.S.- Mohanlal Ganj, District- Lucknow is hereby set aside.

16. Let the appellant- Mohit Sahu be released on bail in the aforesaid case crime number"

6. Taking note of the aforesaid as also the fact of the present case, this Court finds that the case of the appellant is similar to the case of the co-accused Mohit Sahu as also the fact that the appellant has criminal history of one case in which she has already been granted bail and she has been languishing in jail since 26.04.2019 accordingly, this Court is of the view that the impugned order dated 19.11.2019 passed by Special Judge, SC/ST Act, Lucknow in Bail Application No. 7917 of 2019 arising out of F.I.R. No. 220 of 2019, under Sections 302, 201, 506 I.P.C. and Section 3(2)(v) of SC/ST Act, P.S. Mohanlal Ganj, District Lucknow is liable to be set aside. Accordingly, it is hereby set aside and the appeal is allowed.

7. Let appellant, **Anjani Sahu** be released on bail in the aforesaid case crime number on her 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.

8. 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 :- 10.6.2024

Mohit Singh/-