

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2119 of 2022

Appellant :- Godaniya @ Lal Bahadur

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

Counsel for Appellant :- Manish Mani Sharma, Abhay Shankar
Tiwari, Akhilesh Pratap Singh, Hari Bux Singh

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Rejoinder affidavit, filed by learned counsel for the appellant, is taken on record.
2. The State in its counter affidavit has enclosed a communication sent to the opposite party no.2 informing him with regard to the pendency of the instant appeal before this Court and despite being served, the opposite party no.2 is not represented before this Court.
3. Heard Shri Hari Bux Singh, learned counsel for the appellant as well as learned A.G.A. for the State and perused the record.
4. The instant criminal appeal under Section 14-A(2) of the S.C./S.T. (P.A.) Act has been filed by the appellant/**Godaniya @ Lal Bahadur** for grant of bail and to set-aside/quash the impugned judgment and order dated 15.07.2022 passed by the Additional Sessions Judge-II/Special Judge, S.C./S.T. Act, Lakhimpur Kheri, in Bail Application No. 179 of 2022, arising out of Case Crime No. 225 of 2022, under Sections 302, 201 I.P.C. & 3(2)5 of the S.C./S.T. Act, Police Station Phoolbehar, District Kheri, during trial.
5. Learned counsel for the appellant while pressing the bail application submits that the appellant has been falsely implicated in this case only on account of suspicion and there is no evidence at all against him with regard to the causing of the death of the deceased.
6. Elaborating further, it is submitted that falsity of the case of the prosecution would be evident in the background of the fact that prior to the lodging of the first information report of this case a written information was given by the brother of the deceased, namely, Munna Lal on 17.05.2022 at Police Station Phoolbehar, District Kheri, stating that on 13.05.2020 at about

5:00 pm. deceased (his brother) had gone to take bath in 'Sharda River' and had drowned and his dead-body has been recovered today i.e. on 17.05.2022 and no allegation has been levelled in this written information against anyone. However, four days after giving this information another brother of the deceased, namely, Ram Prasad had lodged an F.I.R. at the same police station Phoolbehar against four accused persons alleging that the deceased had gone on 12.05.2022 to his in-law's house situated at village Deehpurwa Majra Safipur, Police Station Sadar, Lakhimpur Kheri to bring back his wife where he was assaulted by his in laws' and thereafter on 14.05.2022 the deceased had gone to village Majhari with appellant to participate in a marriage ceremony and they had gone to take bath in a river, where the appellant had raised an alarm that the deceased had drowned while taking bath in 'sharda river' and his dead body was recovered on 16/17.05.2022 from the bank of river.

7. It is vehemently submitted that since Shri Munna Lal, who had given earlier written information with regard to the drowning of the deceased on 13.05.2020 was also the real brother of the deceased, it may not be denied that the information of the same was also available with the informant Ram Prasad, who is also the brother of the deceased and only on the basis of suspicion the appellant has been implicated in this case.

8. It is next submitted that the investigating officer during the course of investigation has recorded the statement of various witnesses who have stated that it was on 12.05.2022 the deceased had gone to his in law's house and he was highly intoxicated (under the influence of liquor) and having regard to the high state of intoxication his in-law's refused to sent his wife with him and after many days of the recording of the statements of the witnesses Ramhet, Haridayal, Rampal Verma and Raghuver, who were all the witnesses of the village where the *sasural* of the deceased is situated, the investigating officers on 21.05.2022 is shown to have recorded the statement of two witnesses, namely, Srikant and Dharmpal Singh, who are 'chance witnesses' and they have stated to have seen the appellant going with the deceased towards 'Sharda River' and also emerging from there alone and screaming that the deceased had drowned.

9. It is further submitted that keeping in view the belated recording of the statements of these two witnesses who are 'chance witnesses', may not be given to their evidence and they appears to be planted and, moreover, even if the statement of these two witnesses, namely, Srikant and Dharampal Singh is

believed on its face, the case of the prosecution is silent about the 'motive' and keeping in view that it is not a case of direct evidence, there is no clinching circumstances against the appellant on the basis of which the prosecution may secure his conviction. Appellant is in jail in this case since 21.05.2022 and he is not having any criminal antecedents. Charge sheet in this case has already been submitted and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

10. Learned A.G.A. on the other hand submits that appellant is accused of committing heinous offence and he has been seen by two independent witnesses going towards 'sharda river' with the deceased and returning alone and also raising an alarm that the deceased had died, which has been belied by the postmortem report, wherein the death of the deceased has been found to have been caused due to 'asphyxia' as a result of 'antemortem throttling' and various injuries have also been found on the neck of the deceased. Thus, the appellant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that the case of the prosecution is based on circumstantial evidence, as no witness has claimed to have seen the appellant committing the offence. The law with regard to the cases based on circumstantial evidence is now well-settled and the circumstances placed against the accused person(s) must be of conclusive nature. All these circumstances must form a chain so strong not to leave any doubt in the story of the prosecution must be indicating towards the guilt of the accused that it is only and only the accused who has committed the offence and no one else. The circumstances which are being placed against the appellant in this case is of being witnessed by two witnesses, namely, Srikant and Dharampal Singh, whose statements have been recorded on 21.05.2022, while the deceased is shown to have drowned on 13/14.05.2022. Admittedly these witnesses are the chance witnesses. It also appears to be admitted to the parties that the prosecution has not alleged any 'motive'. There are various witnesses whose statements have been recorded by the investigating officer who have admitted that on 12.05.2022 the deceased was seen in the village where his *sasural* is situated and was in high state of intoxication (under influence of liquor). The postmortem report suggests various injuries on the neck of the deceased and the cause of death has been ascertained as 'asphyxia' as a result of 'antemortem throttling'. Appellant is languishing in jail in this case since 21.05.2022 without any criminal antecedents and the presence of the appellant may be secured before the trial/special court by placing adequate

conditions.

12. Thus, having regard to all the facts and circumstances, the special court/trial court appears to have committed illegality in rejecting the prayer of bail of the appellant.

13. In result, the impugned judgment and order passed by the special court/trial court is **set-aside** and the appeal filed by the appellant is **allowed**.

14. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, let the appellant- **Godaniya @ Lal Bahadur** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The appellant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The appellant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

15. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

16. Identity, status and residence proof of the appellant and sureties be verified by the Court concerned before the bonds are accepted.

17. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 2.9.2024

Praveen