

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2285 of 2022

Appellant :- Ram Murat

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

Counsel for Appellant :- Sanjeev Kumar Dwivedi, Arvind Kumar, Gyan Singh, Jay Kumar Soni, Pramod Kumar, Sachin Kumar Srivastava, Salik Ram Tiwari, Shyam Singh

Counsel for Respondent :- G.A., Parashu Ram Kanaujia

Hon'ble Shamim Ahmed, J.

1. List has been revised and the case is being taken up in the revised call.
2. Heard Shri Gyan Singh, learned Counsel for the appellant, Shri Ashok Kumar Srivastava, learned A.G.A. for the State-respondent and perused the material placed on record.
3. No one appeared on behalf of the private respondents even in the revised call.
4. Rejoinder affidavit filed today in the Court by learned Counsel for the appellant is taken on record.
5. This Criminal Appeal under Section 14-A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 15.07.2022 passed by learned Special Judge, SC/ST Act, Pratapgarh in Bail application No. 2039 of 2022, arising out of Case Crime No. 58/2022, under Sections 147, 148, 323, 504, 506, 452, 304, I.P.C. and Section 3(1)(Da), 3(1)(dha) and 3(2) (Va) of SC/ST Act, Police Station-Kandhai, District-Pratapgarh, whereby the bail application of the appellant has been rejected.
6. Learned counsel for the appellant submits that the appellant has falsely been implicated in the instant case and he has not committed any offence, as claimed by the prosecution. There was an old dispute between the parties, namely, Rakesh alias Pappoo and the complainant, with regard to a patta land, as such, the prosecution has given criminal color to a civil dispute and the matter is purely 'civil' in nature. All the accused persons, named in the first information report, have been assigned with general allegations of assaulting with lathi-danda and knife. It was further submitted that nothing incriminating material has been recovered from the pointing out of the appellant.

7. Learned counsel for the appellant also submits that 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 court in getting the trial concluded expeditiously. It was 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.

8. Learned counsel for the appellant further submits that the main dispute in respect of the alleged patta land was between Rakesh alias Pappoo and the complainant and in the said dispute the allegation of hitting the deceased on his head was assigned to Rakesh by lathi, but there is no any specific allegation assigned to the appellant herein that by which weapon he hit the deceased. More than ten persons were named in the first information report and except Rakesh, all the persons were assigned general allegation of hitting and assaulting. The role of the appellant is totally distinguishable from the person, who have been assigned the main role, namely, Rakesh alias Pappoo, thus, the bail application of the appellant Ram Surat may be considered by this Court sympathetically, as his name was taken only due to village party-bandhi and enmity.

9. 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.

10. It is further stated by the learned counsel for the appellant that the applicant is in jail since 21.02.2022 and has by now done a substantial period of incarceration. In support of his contention, learned counsel for the applicant has placed reliance on Hon'ble Apex Court judgment in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526**, and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the appellant

on conditions as may be imposed by the District and Sessions Judge, Faridabad."

11. Learned counsel further submits that as the appellant has undergone a substantial period of detention, thus, the ratio of law as applicable in the aforesaid case, is also applicable in the case of the present appellant, hence, his bail application may be considered by this Court sympathetically, considering the aforesaid judgment rendered by the Hon'ble Apex Court.

12. It has also been submitted that the applicant has no previous criminal history. This fact has been stated in para-16 of the affidavit filed in support of the bail application. Learned Counsel for the appellant further submits that the co-accused, namely-Ram Surat has already been enlarged on bail by this Court vide order dated 29.08.2024 passed in Criminal Appeal No.2286 of 2022, thus, he submits that the bail application of the present appellant may be also considered by this Court on the ground of parity.

13. Whereas, the learned A.G.A., Shri Ashok Kumar Srivastava, opposed the prayer for bail by submitting that the appellant was also involved in the alleged crime, but he did not dispute this fact that only general allegation has been levelled against the appellant regarding assaulting the person and he submits that the main role has been assigned to one Rakesh alias Pappoo, who hit the deceased on his head by lathi, however, he submits that as the involvement of the appellant cannot be denied alongwith other accused, thus, the appellant is not entitled to be released on bail the present appeal deserves be dismissed.

14. After considering the arguments advanced by the learned counsel for the parties and after perusal of the material available on record, this court finds favour with the arguments of the learned counsel for the appellant that the appellant has been assigned only general role of assaulting and hitting the victim; he has not been assigned any specific role nor any specific weapon has been shown in his hands; the dispute was in respect of a patta land between Rakesh alias Pappoo and the complainant; the matter appears to be a 'civil' dispute and it has been converted into a criminal prosecution; name of the appellant Ram Surat appears to have been taken due to enmity and village party-bandi; none of the witnesses has assigned any specific role to the appellant; role of assaulting to the deceased by lathi has been assigned to Rakesh alias Pappoo; nothing has been recovered on the pointing of the appellant or from his possession.

15. As the appellant has already been in detention since

21.02.2022, he has already undergone substantial period of detention, thus, considering the mandate of Article 21 of the Constitution of India and the law laid down by Hon'ble the Apex Court in the case of ***Dataram Singh vs. State of UP and another***, reported in ***(2018) 3 SCC 22***, and in the case of ***Kamal (supra)***, the appellant has made out a case for bail. The appeal is accordingly ***allowed***.

16. Consequently, the impugned order dated 15.07.2022 passed by learned Special Judge, SC/ST Act, Pratapgarh in Bail application No. 2039 of 2022, arising out of Case Crime No. 58/2022, under Sections 147, 148, 323, 504, 506, 452, 304, I.P.C. and Section 3(1)(Da), 3(1)(dha) and 3(2) (Va) of SC/ST Act, Police Station-Kandhai, District-Pratapgarh, is hereby ***set aside*** and ***reversed***.

17. Let the appellant, **Ram Murat**, be released on bail in the Case Crime No. 58 of 2022, under Sections 147, 148, 323, 504, 506, 452, 304, I.P.C. and Section 3(1)(Da), 3(1)(dha) and 3(2) (Va) of SC/ST Act, Police Station-Kandhai, District-Pratapgarh, 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. The trial court is also directed to expedite the trial of the aforesaid case 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.

19. 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.

Order Date :- 13.9.2024

Piyush/-