

Court No. - 16

Case :- CRIMINAL APPEAL No. - 3017 of 2024

Appellant :- Shiv Sagar Yadav @ Siyare @ Shikari

Respondent :- State Of Up Thru. Prin. Secy. Home And Another

Counsel for Appellant :- Avinash Pandey,Rahul Kumar

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the appellant, learned Additional Government Advocate for the State and perused the record. Notice to informant is served as per instruction received by learned A.G.A.

This criminal appeal has been filed under Section 14-A(2) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 to set aside order dated 11.3.2024, passed by Special Judge, SC/ST Act, Pratapgarh in Bail No.127 of 2024 arising out of case crime No. 148 of 2021 I.P.C. under sections 302, 201, 120-B I.P.C. and Section 3(2)(V) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, P.S. Manikpur, district Pratapgarh.

It is alleged in the prosecution case that on 3.8.2021 at about 5.00p.m., son of the informant Dharmendra Saroj aged about 29 years moved to his house from Kanpur, however, he did not reach home. It is further alleged that on 6.8.2021, wife of the deceased went to police station and there she identified the dead body which was found in Gange river. On 7.8.2021, the family members of the deceased also identified the dead body in marchery.

Learned counsel for the appellant/applicant submits that the applicant is innocent and has been falsely implicated. On the basis of the statement of one Mahendra Saroj who has alleged that on the date of incident, he saw the applicant sitting on a motorcycle, the applicant has been implicated. The deceased was also sitting with the co-accused Ankur Maurya who was riding the motorcycle.

It is submitted that the co-accused Ankur Maurya has been granted bail by the Special Judge, SC/ST, Pratapgarh vide order dated 4.2.2022 passed in Bail No.39 of 2022. The applicant claims parity and submits

that his case is on better footing than that of the co-accused Ankur Maurya who was riding the motorcycle. The applicant was not riding the motorcycle; rather he was simply sitting thereon. The first information report has been lodged after delay of eight days. Even the statement of Mahendra Saroj has been recorded after 12 days. There is no independent witness of the joint recovery shown from the three accused persons including the applicant. The applicant is in jail since 13.8.2021

It is further submitted that there is no possibility of the appellant of fleeing away after being released on bail or tampering with the witnesses. In case the appellant is enlarged on bail, he shall not misuse the liberty of bail.

Learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid facts as argued by the learned counsel for the appellant/applicant.

Considering the facts and circumstances of the case, period of incarceration, the case is of circumstantial evidence, the co-accused Ankur Maurya has been released on bail by the trial Court, judgment in Javed Gulam Nabi Shaikh versus State of Maharashtra (2024)9 SCC 813, without commenting upon merit of the case, I am of the view that the learned court below has failed to appreciate the material available on record.

In view of above, the order of rejection of bail passed by the court below is liable to be and is hereby set aside.

Accordingly, the appeal is allowed.

Let the appellant/applicant be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

- (i) The applicant will not tamper with the evidence during the trial.
- (ii) The applicant will not pressurize/ intimidate the prosecution witness.
- (iii) The applicant 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.

(iv) The applicant 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 applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi) In case the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant 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.

Order Date :- 19.12.2024

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