

Court No. - 16

Case :- CRIMINAL APPEAL No. - 3665 of 2024

Appellant :- Rashid @ Mohd. Habibul Islam

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

Counsel for Appellant :- R.B.S. Rathaur

Counsel for Respondent :- G.A.,Aklavya,Chandan Prasad,Sarjoo Ram

Hon'ble Karunesh Singh Pawar,J.

Counter Affidavit filed by learned A.G.A is taken on record.

Vakalatnama filed by Shri Aklavya, Advocate on behalf of the complainant is taken on record.

Heard learned counsel for the appellant, learned A.G.A. appearing for the State, and learned counsel for the complainant.

This criminal appeal has been filed by the appellant under Section 14-A(2) the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to set aside the impugned order dated 19.10.2024 passed in Bail application No. 3190 of 2024 in Case Crime No.308 of 2023 under Section 306 IPC and Section 3(2) (v) S.C./S.T. Act, Police Station Kunda, District Pratapgarh.

In the prosecution case, it is alleged that on 3.9.2023 the deceased between 2-3 p.m. was sitting at home and he was stressed for the last 10-12 days. Upon being asked, he told the informant that Rashid and Arshad have taken money from him and Kamlesh has also taken Rs.15,00,000/- from the deceased. It is alleged that due to that the son of the informant has committed suicide. In the postmortem report cause of death has been shown as shock and hemorrhage due to ante mortem injury. From the suicide note, it is apparent that the present appellant is not named in that suicide note. Allegation is on the co-accused Rashid and

Kamlesh. There is no scientific report regarding the alleged suicide note to the effect that it is written by the deceased. During the investigation after several months on 27.3.2024 two whatsapp videos were recovered. In one video it is alleged that the applicant is accusing the deceased for taking money. No certificate under Section 65B of the Evidence Act has been obtained by the Investigating Officer regarding the alleged video. Even otherwise video is not audible.

Learned Counsel for the appellant submits that even if the entire prosecution story is taken as it is, no case under Section 306 Indian Penal Code is made out. The alleged amount for transferring the land was not given to the applicant by the deceased. Only Rs.4,00,000/- was transferred in the account of the applicant. Since entire amount was not transferred in the name of the appellant, therefore, the sale deed could not be executed in favour of the deceased. Nothing has been collected by the Investigating Officer to show that the entire consideration amount was transferred.

He further submits that the co-accused persons namely Kamlesh Gautam and Arshad @ Ashad have been granted bail by this Court vide orders dated 20.11.2024 and 5.12.2024 passed in Criminal Misc Bail Application No.12066 of 2024 and Criminal Appeal No.3493 of 2024 respectively. The case is of circumstantial evidence. Chain of circumstances is not complete as the occurrence is of 3.9.2023. The suicide notice has come into existence on 3.12.2023. Apart from this, two videos in the mobile phone of the deceased of . 45minutes and 1.12 minutes have been shown in the case diary dated 7.2.2014 i.e. after several months of the incident. Even from those videos it is not clear that as to who was speaking. The suicide note as well as the videos have not been scientifically verified and without that charge sheet has been filed in a hurry. There is no FSL report to point towards the guilt of the applicant. The applicant has explained the criminal history in paragraph 25 of the bail application. The case is of circumstantial evidence.

It is contended on behalf of the appellant that there is no likelihood that the appellant-applicant after release on bail may flee from the process of law or will

misuse the liberty of bail granted by this Court.

Learned A.G.A. as well as learned counsel for the complainant have opposed the prayer for bail, but could not dispute the factual submissions made by the learned counsel for the appellant-applicant.

On due consideration to the submissions advanced, perusal of the record, and the facts that the applicant is in jail since 22.9.2024, charge-sheet in this case has been filed, *prima facie* there is lack of scientific evidence to corroborate the prosecution case and without commenting upon merits, 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 passed by the court below is liable to be set aside.

Accordingly, the appeal is allowed and the impugned order dated 19.10.2024 is set aside.

Let the appellant-applicant Rashid @ Mohd. Habibul Islam involved in the aforesaid case be released on bail on furnishing a personal bond with two heavy sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

- (i) The appellant will not tamper with the evidence during the trial.
- (ii) The appellant will not pressurize/ intimidate the prosecution witness.
- (iii) 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.
- (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, without sufficient cause, 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 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

Madhu D.R/P.S