

Court No. - 13

Case :- CRIMINAL APPEAL No. - 3484 of 2023

Appellant :- Naresh Rawat And Another

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

Counsel for Appellant :- Shahid Kamal Siddiqui, Atul Kumar

Counsel for Respondent :- G.A.

Hon'ble Saurabh Lavania, J.

In view of office report dated 19.01.2024 and 23.04.2024, which is on record, this Court is of the view that the service of notice upon respondent no.2 in terms of order dated 15.12.2023 is sufficient.

Today, when the case was called out, no one has appeared on behalf of respondents No.2 to oppose the present appeal. In such circumstances, this Court proceeded to hear the case on merits.

Heard learned counsel for the appellants, learned A.G.A. for the State and perused the record.

The present appeal has been filed under Section 14-A (2) of Scheduled Castes and Scheduled Tribes Act, 1989 against the impugned order dated 07.11.2023 passed by Special Judge, SC/ST Act/ Additional Sessions Judge, Lucknow, passed in Bail Application No. 8723 of 2023 (Naresh Rawat And Another Vs. State of U. P.), arising out of F.I.R/ Case Crime No. 320 of 2022, under Sections 302 I.P.C., and Section 3(2)(v) of SC/ST Act, Police Station- Mall, District- Lucknow.

While pressing the present appeal, counsel for the appellants submitted that the appellants have been falsely implicated in this case. He also submitted that co-accused, namely, Kamleshwar Singh Alias Chantu Singh has already been released on bail vide order dated 29.08.2023 passed in Criminal Appeal No. 3236 of 2022. His submission is that the appellants are also entitled for bail on the ground of parity.

Relevant portion of order dated 29.08.2023 passed in Criminal Appeal No. 3236 of 2022, referred above, is quoted here-in-under:

"...4. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case due to enmity and village party bandi. No such incident took place, as alleged by the complainant in the F.I.R. The only fact is that the son of the appellant got married with the daughter of the opposite party No.2-complainant. The appellant has not made any objection regarding the said marriage and the daughter of the complainant has been accepted as daughter-in-law and she is happily living with the son of the appellant. There is no hindrance created by the appellant in their marriage. The allegation, as levelled in the F.I.R. that the appellant had threatened husband of the opposite party No2-complainant with dire consequences to kill him is false and fabricated. No such threaten was ever given by the appellant to the husband of the opposite party No.2.

5. Learned counsel for the appellant further submits that the name of the appellant was taken by the co-accused Naresh Rawat and Kamlesh Lodh in the confessional statement that the appellant has given Rs.10,000/- for murder of the husband of the opposite party No.2, whereas there is no any independent witness, who may have seen or say that the appellant has given the alleged amount to the co-accused Naresh Rawat and Kamlesh Lodh, even though it was further argued that no one has seen committing the alleged murder by the co-accused Naresh Rawat and Kamlesh Lodh. It was their own confessional statement in which the co-accused Naresh Rawat has admitted this fact that he along with Kamlesh Lodh killed the husband of the opposite party No.2 by putting him in the water, even though there is no independent eye witness of the alleged incident, who has seen the co-accused Naresh Rawat and Kamlesh Lodh or the appellant committing murder of the husband of the opposite party No.2 or to confirm this fact that the appellant was present on the spot on the date of alleged incident along with Naresh Rawat and Kamlesh Lodh

6. Learned counsel for the appellant further submits that the statement of the complainant was recorded under Section 161 Cr.P.C. in which she has almost repeated the same version of the F.I.R.. Further, she developed her case and made allegation against the appellant. He further submits that as per the F.I.R. the alleged incident took place on 04.08.2022 and the statement of the other witnesses, namely, Chhanga Rawat, Mool Chand Lodh, Smt. Ram Kali, Sunil Rawat, Balak Rawat was recorded on 05.10.2022 under Section 161 Cr.P.C. after almost two months of the alleged incident and they all have repeated almost the same version in a cyclostyle version, which shows that the the statement were prepared by the prosecution with the connivance of the complainant and in their statements all the witnesses stated that they have seen the appellant along with co-accused taking the husband of the complainant, but none of the witnesses have stated that the appellant or the co-accused have murdered the husband of the complainant or they have seen the alleged crime committed by the appellant or the co-accused by their eyes. Only last seen averment was made.

7. Learned counsel for the appellant further submits that the cause of death as per post-mortem is drowning as noted and there were four injuries present on the person of the deceased-who was the husband of the opposite party No.2, but it was not the case of the complainant that the appellant has tortured or beaten the husband of the opposite party No.2. The only allegation is that on his instance the

co-accused Naresh Rawat and Kamlesh Lodh have committed the murder and appellant has paid Rs. 10,000/- for the murder.

8. Learned counsel for the appellant while placing reliance upon the judgment of Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra : 1984 Cri. L.J. 178 has argued that no one had seen the commission of crime, there is no connecting link to indicate the involvement of appellant in the commission of crime, it is a case of circumstantial evidence and the chain of evidence is totally broken, the police has also failed to complete the chain of evidence to connect the appellant in the present crime. He further submits that the appellant is not involved in the present crime, thus he should be released on bail. His name surface only in the confessional statement of the co-accused.

9. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 12.09.2022 and has served substantial period of detention and 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. He has 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.

10. For the aforesaid reasons, learned counsel for the appellant prayed that the instant criminal appeal may be allowed in the interest of justice and the order dated 19.11.2022 passed by the court of Special Judge (SC/ST Act)/Additional Sessions Judge, Lucknow in Bail Application No. 9884 of 2022 (Kamleshwar Singh alias Chantu Singh vs. State of U.P.), arising out of Case Crime No. 320 of 2022, under Section 302 I.P.C. and Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Mall, District Lucknow, deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

11. 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 and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It has also been pointed out that the accused has criminal history of two cases which has already been explained in para 17 of the rejoinder affidavit and he is in jail since 12.09.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

12. Per contra, Sri Keshav Prasad, learned counsel for the opposite party No.2 has vehemently opposed the prayer by submitting that the involvement of the appellant is very clear, but did not dispute this fact that no one has seen the appellant committing the alleged crime. Sri Ashok Kumar Singh, learned A.G.A. for the State also made agreement on the argument as advanced by learned counsel for the opposite party No.2 and has submitted that the name of the appellant was taken by the co-accused Naresh Rawat and Kamlesh Lodh, thus there is active participation of accused/appellant in the crime. Therefore, the accused/appellant is not entitled to be enlarged on bail and the instant criminal appeal deserves to be dismissed. However, he has been unable to dispute the other factual submissions advanced by the learned counsel for the accused/appellant.

13. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the

nature of evidence, the period of detention already undergone, unlikelihood of early conclusion of trial and also in absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that there appears force in the argument of learned counsel for the appellant that the only allegation of the complainant is that on the instance of the appellant the co-accused Naresh Rawat and Kamlesh Lodh have committed the murder. The name of the appellant was taken by the co-accused Naresh Rawat and Kamlesh Lodh in the confessional statement that the appellant has given Rs.10,000/- for murder of the husband of the opposite party No.2, whereas there is no any independent witness, who has seen the appellant giving the alleged amount to the co-accused Naresh Rawat and Kamlesh Lodh, there also appears force in the argument of learned counsel for the appellant that no one has seen committing the alleged murder. The co-accused Naresh Rawat has admitted this fact that he along with Kamlesh Lodh killed the husband of the opposite party No.2 by putting him in the water, even though there is no independent eye witness of the alleged incident, who has seen the co-accused or the appellant committing murder of the husband of the opposite party No.2 or have seen that the appellant or was present on the spot on the date of alleged incident along with co-accused Naresh Rawat and Kamlesh Lodh and further considering that the other witnesses, namely, Chhanga Rawat, Mool Chand Lodh, Smt. Ram Kali, Sunil Rawat, Balak Rawat they all stated that they have seen the appellant along with co-accused taking the husband of the complainant but none of the witnesses have stated that the appellant or the co-accused have murdered the husband of the complainant or they have seen the alleged crime committed by the appellant or the co-accused, there further appears force in the argument of learned counsel for the appellant that it is a case of circumstantial evidence and the chain of evidence is totally broken, the police has also failed to complete the chain of evidence to connect the appellant in the present crime further considering the fact that appellant is in jail since 12.09.2022 and has now by done a substantial period of detention and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of Sharad Birdhichand Sarda (supra) and Dataram Singh Vs. State of UP and another, reported in (2018) 3 SCC 22, this Court is of the view that the learned court below has failed to appreciate the material available on record, both the impugned orders passed by the trial court are liable to be set aside

14. Accordingly, the appeal is allowed. Consequently, the order order dated 19.11.2022 passed by the court of Special Judge (SC/ST Act)/Additional Sessions Judge, Lucknow in Bail Application No. 9884 of 2022 (Kamleshwar Singh alias Chantu Singh vs. State of U.P.), arising out of Case Crime No. 320 of 2022, under Section 302 I.P.C. and Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Mall, District Lucknow is hereby reversed and set aside..."

Upon due consideration of the facts and circumstances of the case, submissions of counsel for the appellants and learned A.G.A., F.I.R., impugned order, as also that co-accused, namely, Kamleshwar Singh Alias Chantu Singh has already been released on bail vide order dated 29.08.2023 passed in Criminal Appeal No. 3236 of 2022, this Court finds that the present appeal is liable to be allowed. Accordingly, it is allowed.

Order dated 07.11.2023 passed by Special Judge, SC/ST Act/ Additional Sessions Judge, Lucknow, passed in Bail Application No. 8723 of 2023 (Naresh Rawat And Another Vs. State of U. P.), arising out of F.I.R/ Case Crime No. 320 of 2022, under Sections 302 I.P.C., and Section 3(2)(v) of SC/ST Act, Police Station- Mall, District- Lucknow, is hereby set aside.

Let appellants/applicants, namely, Naresh Rawat and Kamlesh Lodh be released on bail in the aforesaid case crime number on his furnishing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following additional conditions :-

- (i) The appellants shall cooperate with the prosecution during trial.
- (ii) The appellants shall not tamper with the evidence during trial.
- (iii) The appellants shall not pressurize/intimidate the prosecution witness(s).
- (iv) The appellants shall not commit an offence.
- (v) The appellants 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 appellants shall remain present before the trial court on each date fixed, either personally or through counsel.
- (vii) The appellants shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court.
- (viii) The appellants shall remain present, in person, before the trial court on the dates fixed for recording of statement under Section 313 Cr.P.C.

In case of default of above conditions, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law

As this order relates to enlargement of the appellant on bail, it is clarified that observation(s) 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(s) made in this order.

Order Date :- 24.4.2024
(Manoj K.)