HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 9302 of 2024

Faqeer @ Faqeer Baksh

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Mohammad Fateh
Counsel for Respondent(s)	:	G.A., Prashant Ojha

Court No. - 74

HON'BLE SAMIT GOPAL, J.

1. List revised.

2. Heard Sri Mohammad Fateh, learned counsel for the appellant, Sri Shiv Om Tripathi, Advocate holding brief of Sri Prashant Ojha, learned counsel for the opposite party no.2 and Sri Birendra Pratap Singh, learned counsel for the State and perused the record.

3. This criminal appeal under Section 14-A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant- **Faqeer @ Faqeer Baksh**, with the prayer to set aside the order dated 07.08.2024 passed by the Special Judge (SC/ST Act), Bareilly in Session Trial No. 453 / 2023 arising out of Case Crime No. 657 of 2022, under Section 302/34 I.P.C. and Section 3(2)(V) S.C./S.T. Act, Police Station Bhojipura, District Bareilly, with a further prayer to release the appellant on bail in the aforesaid case during the pendency of trial.

4. On 03.10.2024 the following order was passed by a coordinate bench of this court:-

"Supplementary-affidavit filed today is taken on record.

This the second criminal appeal of the appellant. While rejecting the first criminal appeal, learned counsel for appellant was directed to produce the certified copy of first bail rejection order before the trial court and trial court was expected to conclude the trial against the appellant within period of one year from the date of production of certified copy of the order dated 08.06.2023.

Learned counsel for appellant has not produced the certified copy of the first bail rejection order before the trial court as yet.

In view of the above, this case is released.

List this case before appropriate Court after obtaining nomination from Hon'ble The Chief Justice."

5. Subsequently, vide order dated 09.12.2024 Hon'ble The Chief Justice passed an order directing the matter to be listed before the appropriate Court dealing with such matters.

6. The records show that the first prayer for bail of the appellant was dismissed vide order dated 08.06.2023 passed by a coordinate bench of this court in Criminal Appeal No. 3634 of 2023 (Faqeer @ Faqeer Baksh Vs. State of U.P. and Another), the same reads as under:-

"1. Heard Sri Mohammad Fateh, learned counsel for the appellant; Sri Arvind Kumar Sahu, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.

2. The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to set aside the impugned order dated 21.03.2023, whereby the Special Judge, SC/ST Act, Bareilly, in Sessions Trial No. 453 of 2023 has rejected the bail application of the appellant moved by him in Case Crime No. 657 of 2022, under Sections 302/34 IPC and Section 3(2)(V) of SC/ST Act, Police Station Bhojipura, District Bareilly.

3. There is allegation in the FIR lodged against unknown accused that on 17.12.2022 at about 8:30 pm, the real brother of the informant, Jagdish, aged about 45 years had gone to the agricultural field for guarding his crops, but he did not returned in the morning. Thereafter, Shamshad, of his village made phone call to the pradhan of the village that brother of informant, Jagdish, is lying dead on the road. The pradhan informed that the informant and thereafter, the FIR was lodged on the next day. It was stated that someone caused his murder by causing injury with knife.

4. Learned counsel for the appellant has submitted that no one was named in the FIR. The Investigating Officer has falsely implicated the appellant in this case alongwith the co-accused persons. The appellant was implicated on the basis of the information given by the informant. A knife was recovered in three pieces after 26 days. The implication under section SC/ST Act is not justified. The appellant has criminal history of three cases explained in supplementary-affidavit which are of minor nature. The appellant is languishing in jail since 14.01.2023.

5. Learned AGA and learned counsel for the informant have vehemently opposed the prayer for the bail of the appellant.

6. After hearing the rival contentions, this Court finds that in the statements of the witnesses recorded by the Investigating Officer of all the family members of the deceased, it has come that the appellant, co-accused, Jahid and Chota were friends. They often used to consume liquor together and the appellant, co-accused, Jahid and Chota, often used to give information of the street cattle to the cattle smugglers which was opposed by the deceased. The accused persons did not liked the deceased opposing them for their act of selling street cattle to the smugglers and therefore on the fateful night when the deceased and the accused persons both were drunk they brutally assaulted him by knife and caused his murder. There is incriminating recovery also made from the appellant and co-accused persons which substantiate the, otherwise inadmissible evidence of confession of appellant recorded before the police as per sections 25/26 of Evidence Act. The deceased was brutally murdered with eleven injuries on his body caused by sharp edged weapon.

7. This Court after hearing the learned counsels for the parties does not finds any ground for enlarging

the applicant on bail at this stage.

8. The criminal appeal is accordingly, dismissed.

9. The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferable within a period of one year from the date of production of certified copy of this order."

7. While dismissing the first bail application, the trial of the matter was expedited and it was directed to be concluded as expeditiously as possible within a period of one year from the date of production of certified copy of the said order.

8. Learned counsel for the applicant was inquired as to when the said order has been filed before the trial court concerned for its compliance and the expeditious disposal of the trial, to which he submits that the same has not been filed before the trial court concerned. He submits that the matter be appreciated in the light of the circumstances that the statement of first informant Veerpal was recorded before the trial court as P.W.-1, statement of P.W.-2 Sushil Kumar Sub-Inspector, P.W.-3 Head Constable Ghanshyam Pal, P.W.-4 Santosh Kumar the son of the deceased and P.W.-5 Smt. Rajo Devi wife of the deceased Jagdish were recorded and perusal of the statement of P.W.-1, P.W.4, and P.W.- 5 would go to show that the implication of the applicant in the present case is without any credible evidence, he has drawn the attention of the court to Annexure-14 in support of the bail application and Annexure SA-1 and SA-2 to the second supplementary affidavit dated 25.05.2025 for the same. It is submitted that the appellant is in jail since 14.01.2023.

9. *Per contra*, learned counsel for the opposite party no.2 and learned counsel for the State opposed the prayer for bail and submitted that in so far as the said statements are concerned, the present matter is a contested matter in which the witnesses have supported the prosecution case. It is further submitted that the first prayer for bail of the appellant was rejected by another bench of this Court vide order dated 08.06.2023. It is submitted that there is no fresh and new ground in the present appeal.

10. After having heard learned counsel for the parties and perusing the record, it is evident that the first bail application of the appellant was rejected by a co-ordinate Bench of this Court vide order dated 08.06.2023. The matter was thus released and placed before Hon'ble The Chief Justice for nomination. Hon'ble The Chief Justice vide order dated 09.12.2024 directed the matter to be listed before the appropriate Court dealing with

such matters. This matter is listed before this court. The trial of the applicant was expedited vide order dated 08.06.2023 on production of certified copy of the said order. The applicant has not filed the said order before the trial court and thus advantage of the same cannot be extended. In so far as the appreciation of the statements of witnesses recorded in the trial is concerned, it is trite law that the same cannot be appreciated in a bail application and truthfulness of the testimonies cannot be judged here. The same has to be done by the trial court at the appropriate stage in the trial. There is no fresh and new ground in the present appeal. Further it is also relevant that trial in the matter is going on diligently in which five witnesses have been examined.

11. The appeal is **rejected**.

12. Pending application (s), if any, shall stand disposed of.

November 2, 2026
AS Rathore

(Samit Gopal,J.)

Digitally signed by :-
ABHISHEK SINGH RATHOR
High Court of Judicature at Allahabad