

Court No. - 65

Case :- CRIMINAL APPEAL No. - 7423 of 2022

Appellant :- Waseem Khan

Respondent :- State of U.P. and Another

Counsel for Appellant :- Yakub Ali

Counsel for Respondent :- G.A.

Hon'ble Sanjay Kumar Pachori,J.

Heard Shri Yakub Ali, learned counsel for the appellant, Shri Om Prakash Dwivedi, learned A.G.A. for the State and perused the material on record. Despite service of notice upon second respondent, none appears on his behalf.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant **Waseem Khan** to set aside the impugned order dated 22.9.2022, whereby the Special Judge (SC/ST Act), Mau has rejected the bail application No. 1530 of 2022 of the appellant moved by him in Case Crime No. 260 of 2020, under Sections 419, 420, 406, 120B, IPC and Section 3(1)(da) of SC/ST Act, Police Station Dakshin Tola, District Mau.

Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case due to ulterior motive. It is further submitted that the appellant is not named in the first information report. First information report dated 30.10.2020 was registered by the victim under Section 376, 313, 504, 506, 419, 420, 406, 120-B, IPC, Section 67A of the Information Technology Act and Section 3(2)(v) of the SC/ST Act. It is further submitted that the appellant has been implicated in the aforesaid case after 14 months of the lodging of the first information report. It is further submitted that the only allegation against the appellant is that the victim had deposited Rs. 79,000/- in the account of the present appellant. It is further submitted that the appellant is driver of co-accused Raju Khan. The offences are punishable up to seven years imprisonment. It is further submitted that co-accused Majhar Kamal @ Manish Pandey and Yogesh Kumar have been granted bail by the Coordinate Benches of this Court vide orders dated 29.9.2022 and 11.10.2022 in Criminal Appeal Nos. 3165 of 2021 and 6159 of 2022. It is further submitted that the appellant is languishing in jail since 31.8.2022. The appellant has no criminal history.

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.

Per contra, learned A.G.A. has supported the order passed by the Special Judge and vehemently opposed the prayer for grant of bail to the applicant. But he could not point out any material to the contrary. He further submits that in case the applicant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

After considering the facts of the present case it prima facie appears that;

- (a) The appellant is not named in the first information report;
- (b) The appellant has been implicated in the aforesaid case after 14 months of the lodging of the first information report;
- (c) Co-accused Majhar Kamal @ Manish Pandey and Yogesh Kumar have been granted bail by the Coordinate Benches of this Court vide orders dated 29.9.2022 and 11.10.2022 in Criminal Appeal Nos. 3165 of 2021 and 6159 of 2022;
- (d) The appellant is languishing in jail since 31.8.2022.

It is a settled law that while granting bail, the court has to keep in mind the nature of accusation, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, his role and involvement in the offence, his involvement in other cases and reasonable apprehension of the witnesses being tampered with;

Taking into account the totality of facts and keeping in mind, the ratio of the Apex Court's judgment in the case of **State of Rajasthan v. Balchand @ Baliay (1977) 4 SCC 308, Gudikanti Narasimhulu And Ors., v. Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429, Ram Govind Upadhyay v. Sudarshan Singh & Ors., (2002) 3 SCC 598, Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., (2010) 14 SCC 496 and Mahipal v. Rajesh Kumar & Anr., (2020) 2 SCC 118**, the larger interest of the public/State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail. Hence, the present criminal appeal is allowed and impugned order dated 22.9.2022 is set aside.

Let appellant/applicant, **Waseem Khan** be released on bail in

the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) 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.

(ii) The applicant shall not pressurize/intimidate the prosecution witnesses.

(iii) The applicant shall remain present, in person, 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 of Cr.P.C.

(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 the trial court.

(v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the applicant 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 in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the applicant, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The party shall file computer generated copy of such order

downloaded from the official website of High Court Allahabad, self attested by the applicant along-with a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked ;

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 8.12.2022

T. Sinha