

Court No. - 76

Case :- CRIMINAL APPEAL No. - 4520 of 2021

Appellant :- Sanni Singh

Respondent :- State Of U P And Another

Counsel for Appellant :- Manish Gupta, Vinay Kumar

Counsel for Respondent :- G.A., Arvind Kumar, Rahul Chaudhary

Hon'ble Rahul Chaturvedi, J.

Heard Sri Manish Gupta, learned counsel for the appellant, Sri M.S. Arya, Advocate connected virtually from Delhi assisted by Sri Arvind Kumar, learned counsel for the complainant as well as Sri Satendra Tiwari, learned A.G.A for the State and perused the record.

This criminal appeal under Section 14 A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "S.C./S.T. Act") has been filed for setting-aside the impugned order dated 15.09.2021 passed by learned Special Judge, SC/ST Act/Additional Session Judge, Gorakhpur in Bail Application No. 4107 of 2021, arising out of Case Crime no.291 of 2021, under Sections 302, 307, 506, 120B IPC I.P.C. and Section 3(2)(V) of SC/ST Act, Police Station-Gola, District-Gorakhpur.

Pleadings between the parties have been exchanged and the matter is ripe for final submissions.

Submission made by the learned counsel for the applicant drawing the attention of the Court to the FIR lodged by Anis Kumar for the incident dated 24.07.2021 the present FIR was lodged on 25.07.2021 at 2.45 hours against as many as 17 named accused persons and four persons on two motorcycles.

The long and short of the entire prosecution case is that the informant's younger brother was Gram Panchayat Adhikari posted at Block Urwa, Gorakhpur. He belongs to schedule caste community. During his training period he has developed some amount of intimacy with his course-mate Ms. Dipti Mishra. Negating all odds and objection of the family members and other friends and relatives, they have decided and have performed, registered marriage and started residing as husband and wife. This marriage have raised eye brows of all family members of Dipti Mishra. All of them got infuriated and started waiting for the time to eliminate Anis Kumar (the deceased). After hatching the conspiracy on 24.07.2021 when the deceased went to market around 9-10 a.m. alongwith his uncle Devi

Dayal, he was ambushed by two motorcycle riders and they have assaulted upon Anis Kumar with sharp edged weapon and making Devi Dayal (uncle) seriously injured. Anis Kumar was taken to hospital where he declared dead by the doctors. It has further mentioned in the FIR that informant has firm belief that the named accused persons have hatched the conspiracy and eliminated his brother. The informant further alleged that Abhishek Tiwari and Vivek Tiwari and Sanni Singh (applicant) on account of their previous enmity have actively participated in this offence and thus have facilitated them to commit this cold blooded, day light murder of Anis Kumar

Sri Manish Gupta, learned counsel for the applicant at the outset has submitted that out of 17 named accused persons:- 1-Nalin Mishra, 2-Manikant Mishra, 3-Ajay Mishra, 4-Abhishek Tiwari and 5-Vivek Tiwari were admitted on bail by the coordinate Bench of this Court on 17.12.2021 after allowing their respective appeals. It is contended by the counsel that the case of the applicant stand on much better footing than that of close relatives of Dipti Mishra who were said to have been involved in this case. It is further submitted by Sri Manish Gupta, learned counsel for the applicant that from the FIR it is clear that a casual remark in the last lines of the FIR has been made that on account of previous animosity and the name of the applicant have been purposely dragged. The applicant has got no connection or motive in committing the crime. The applicant-Sanni Singh has not emotional bonding with Dipti Mishra nor he is a family member and this theory floated by prosecution that this is case of 'HONOUR KILLING' goes hay wire.

Per contra Sri M.S.Arya connected through virtual mode from Delhi vehemently opposed the bail application by advancing submission that on the earlier occasion, the informant of the present FIR Anil Kumar in the year 2020 has lodged an FIR as case crime no. 138 of 2020 on 07.05.2020 under Sections 147, 323, 504, 506, and 3(1)(Da)(Dha) of SC/ST Act for the alleged act of "maar peet" against the applicant and others and on this score, it is asserted that the applicant too was said to have been involved in this case. Besides this learned counsel for the informant has heavily relied upon the judgment of Hon'ble Apex Court in the case of **Rama Devi Nayar Vs. State of Rajasthan** reported in **2020(4)SCC CrI.185** whereby in the case of "honour killing" the applicant is said to have been the main conspirator who hatched the conspiracy to kill his sister's

husband which they done as a honour killing. In the instant case, as mentioned above, the applicant is no concerned with the family member of Dipti Mishra and thus the applicant has got no emotional bonding with the lady and the theory of honour killing would not applicable with regard to the applicant and the case of **Rama Devi (supra)** is of no help to the learned counsel for the informant.

I have keenly perused the 161 Cr.P.C. statement of Dipti Mishra widow of Anis Kumar annexed as Annexure No. CA-2. In the entire 161 Cr.P.C. statement she has not even whispered a single word against the applicant.

Learned counsel for the applicant further states that co-accused persons Nalin Mishra in Crl. Appeal No. 4075 of 2021, Abhinav Mishra in Crl. Appeal No. 4032 of 2021, Manikant Mishra in Crl. Appeal No. 3349 of 2020, Abhishek Tiwari in Crl. Appeal No. 4875 of 2021 and Ajay Mishra, in Crl. Appeal No. 3888 of 2021 were allowed by the coordinate Bench of this Court by order dated 17.12.2021. It is contended by the counsel that the applicant's case is on the better footing than that of Nalin Mishra, Ajay Mishra and Abhishek tiwari etc.. who are the blood relation with Dipsti Mishra, they might have some motive in commission of offence but so far as the applicant is concerned he is rank outsiders having no concerned whatsoever in commission of offence. Neither from the applicant nor his pointing out has recovered any incriminating material. The applicant is languishing in jail since 27.07.2021 and deserves to be bailed out.

The submission made by learned counsel for the appellant, prima facie, is quite appealing and convincing for the purpose of bail only.

Learned counsel for the complainant submits that Dipti Mishra, who is on the family way from the deceased facing threats from the named accused persons and out of 17 named only 11 persons are being nabbed so far. by the police. Entire family of the deceased is immense threat from the named accused persons. If the applicant is released on bail, all of the bailed out accused would make the life of Dipti Mishra and other family members of the deceased miserable.

Caste system in our society is deep rooted, we boast ourselves as educated society but we live our lives with double standards. Even after 75 years of Independence we are not able to get out with this social menace. This is pitiable and tragic. It is the moral duty of those sane person, who are well-ff, to protect the under-privileged and

downtrodden, so that they feel themselves safe, secure and comfortable. Simultaneously, the other group also feel that they are the integral and inseparable part of the society and it is in the larger interest of the country and high time for the introspection for every one to give serious thought over the matter.

Indeed, it is mind-boggling, that the counsel for the informant is complaining that the widow of the deceased and his other family members are at sun and wants to have safe shelter. The Court is recording its deep anguish and concern if this is the ground reality. S.S.P. Gorakhpur would provide necessary security to the family members of the deceased and thereafter having periodical assessment deploy the requisite security during trial and take stringent action against every that person who wants to take the law in his hands.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, taking into account the manner and mode of the offence and the period of detention already undergone, and also without expressing any opinion on merits of the case, I am of the view that the appellant has made out a case for bail. Let the **appellant-Sanni Singh**, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two heavy 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 APPELLANT WOULD FULLY COOPERATE IN THE CONCLUSION OF TRIAL WITHIN ONE YEAR AND ANY TEMPERING OR WILLING TACTICS ON THE PART OF THE APPELLANT TO DELAY THE TRIAL WOULD WARRANT THE AUTOMATIC CANCELLATION OF BAIL.

(ii) THE APPELLANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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.

(iii) 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 IPC.

(iv) IN CASE, THE APPELLANT MISUSE THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPELLANT 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 IPC.

(v) THE APPELLANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPELLANT 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 AGAINST HIM IN ACCORDANCE WITH LAW.

However, it is made clear that any wilful violation of above conditions by the appellant, shall have serious repercussion on his bail so granted by this court.

Accordingly, the appeal succeeds and the same stands allowed. Impugned order dated 15.09.2021 passed by learned Special Judge, SC/ST Act/Additional Session Judge, Gorakhpur, is hereby set aside.

Order Date :- 20.1.2022

Abhishek Sri.