

Court No. - 68

Case :- CRIMINAL APPEAL No. - 1089 of 2019

Appellant :- Rajesh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Devesh Kumar Shukla

Counsel for Respondent :- G.A., Ashutosh Kumar Mishra

Hon'ble Ashok Kumar,J.

Heard Sri Ashutosh Kumar Mishra, learned counsel for the appellant, Sri Devesh Kumar Shukla, learned counsel for the complainant and learned AGA for the State.

Learned counsel for the appellant has placed reliance upon the order passed by this Court in Criminal Appeal No. 4775 of 2019 dated 12.6.2020.

Learned counsel for the complainant agreed that the similar order can be passed in the instant appeal.

As agreed, the following order is passed:

Heard Sri Ashutosh Kumar Mishra, learned counsel for the appellant, Sri Devesh Kumar Shukla, learned counsel for the complainant and learned AGA for the State.

This criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, has been filed challenging the order dated 24.1.2019, passed by the Additional Sessions Judge, Court No. 2/ Special Judge (SC/ST Act), in Criminal Misc. (Bail) Application No. 499 of 2019 (Rajesh vs. State of U.P.) arising out of Case Crime No. 553 of 2018, under sections 363, 366, 504, 506 IPC and Section 3(2) (5A) SC/ST Act, P.S. Sasni Gate, District Aligarh, seeking bail in the aforesaid sections.

Learned counsel for the appellant in support of his prayer for bail submits that the impugned order of the court below is illegal and perverse. The court below has not appreciated the evidence available on record in proper perspective. It is further submitted that co-accused Sonu whose name has been shown in the FIR as Amish has been released on bail vide order dated 16.04.2020 of this Court through Criminal Misc. Bail Application No. 19496 of 2019. Since role assigned to the present appellant is not distinguishable with the role of co-accused, therefore, the appellant is also entitled for bail. Referring to the offences levelled against the appellant and co-accused Sonu, it is next contended that only difference in the

offence is of Section 3(2)(5-A) SC/ST Act. The appellant has no criminal history and is languishing in jail since 23.10.2018.

Learned AGA has opposed the prayer.

Considering the facts and circumstances of the case and the arguments advanced on behalf of both the sides and keeping in view the fact that co-accused has been allowed on bail, role assigned to the appellant is not distinguishable to such extent to deny him for bail, hence the appeal has substance and it is accordingly allowed and the order dated 01.07.2019 (impugned order) is hereby set aside.

Let appellant Rajesh, be released on bail arising out of Case Crime No. 553 of 2018, under Sections 363, 366, 504, 506 IPC and Section 3(2)(5A) SC/ST Act, P.S. Sasni Gate, District Aligarh, on his furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned with the following conditions:

(i). The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence, if 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;

(ii). 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;

(iii). In case, the appellant misuses the liberty of bail 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.

(iv) The appellant 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 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

Order Date :- 26.6.2020
S.S.