A.F.R.

Neutral Citation No. - 2024:AHC:37764

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2447 of 2024

Applicant :- Pramod
Opposite Party :- State of U.P.
Counsel for Applicant :- Prashant Yadav,Rajeev Kumar
Counsel for Opposite Party :- G.A.,Mrityunjay Singh

Hon'ble Ajay Bhanot,J.

Matter is taken up in the revised call.

By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 363 of 2023 at Police Station- Raya, District- Mathura, under Section 302 IPC. The applicant is in jail since 06.10.2023.

The bail application of the applicant was rejected by the learned trial court on 01.12.2023.

The applicant was charge sheeted under Section 302 IPC. Clearly the applicant has not been charge sheeted for any offence under the SC/ST Act (hereinafter referred to as 'the Act'). The case is being tried by the exclusive special court established under the SC/ST Act.

The offences under the SC/ST Act are liable to be tried by the exclusive special court defined under Section 2 (bd) of the Act. The provision is extracted hereunder:

"Section 2 (bd) Exclusive Special Court means the Exclusive

Special Court established under sub-section (1) of section 14 exclusively to try the offences under this Act."

The Special Courts are constituted under Section 14 of the Act. The provision is extracted hereunder:

"Section 14. Special Court and Exclusive Special Court.--(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:]

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet."

The legislative intent to establish Exclusive Courts was to ensure that trials for offences under the SC/ST Act are expeditiously concluded and the special procedures under the said Act are duly adhered to. The protective provisions of SC/ST Act

was created for safeguarding the interests of a defined section of the citizenry. Apposite to extract the statement of object and reasons which guided the legislature while framing the enactment are extracted hereunder:

"**STATEMENT OF OBJECTS AND REASONS**

Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act,1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special Legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.

3. The term 'atrocity' has not been defined so far. It is considered necessary that not only the term 'atrocity' should be defined but stringent measures should be introduced to provide for higher punishments for committing such atrocities. It is also proposed to enjoining on the States and the Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimised and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them.

4. The Bill seeks to achieve the above objects."

The Act also lays down certain special procedures for protection of the victims, and for prosecution of the accused. The provisions of grant of bail for accused under the SC/ST Act are distinct from provisions of bail under the Cr.P.C. However, the SC/ST Act is a criminal enactment. The legislation has to be construed strictly, and cannot be applied to offences which do not fall within the ambit of the SC/ST Act. The Special Courts draw their jurisdiction to try offences from Section 2(bd) of the Act. Section 2(bd) of the Act clearly confines the jurisdiction of the Courts to the offences under the SC/ST Act. Since the applicant has not been charge sheeted under the SC/ST Act, the provisions pertaining to the SC/ST Act in regard to the bail shall not be applied to the case of the applicant.

Criminal cases in which the accused are not chargesheeted under the SC/ST Act are liable to be processed under the provisions of Cr.P.C., even if the

offence is being tried by the special court established under the SC/ST Act.

The following arguments made by Shri Rajeev Kumar, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Kamlesh Kumar, learned counsel holding brief of Shri Mrityunjay Singh, learned counsel on behalf of the informant and Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

1. The applicant has not been chargesheeted under the SC/ST Act.

2. The incident occurred on 28.09.2023. The wife of the deceased who is the first informant was informed by one Manvendra Singh that the body of the deceased was lying at a public place/ animal fare market.

3. The inquest was conducted on 29.09.2023 at about 10.30 AM. The postmortem report was drawn up on 29.09.2023 at about 5.35 PM.

4. The FIR was got lodged on 02.10.2023 by the wife of the deceased.

5. Delay in lodgement of the FIR in the facts of this case is fatal to the prosecution case.

6. The FIR has been lodged after due deliberation

and at the instigation of inimical parties in the village.

7. There is no direct evidence or eye witness of the incident.

8. The chain of incriminating circumstances against the applicant is not complete.

9. The applicant was not last seen in the company of the deceased at a time proximate to the death of the latter.

10. No incriminating article has been recovered from the applicant.

11. Prosecution evidence does not connect the applicant with the offence.

12. The applicant does not have any criminal history apart from this case.

13. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- **Pramod** be released on bail in the

aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 1.3.2024
Vandit