

Court No. - 38

Case :- CRIMINAL APPEAL No. - 834 of 2022

Appellant :- Arjun

Respondent :- State of U.P. and Another

Counsel for Appellant :- Garun Pal Singh, Ashish Goyal, Rajat Kumar Shukla

Counsel for Respondent :- G.A., Rakesh Kumar Garg, Ram Krishna Yadav, Yash Garg

Hon'ble Shiv Shanker Prasad, J.

Heard Mr. Rajat Kumar Shukla, learned counsel for the appellant, Mr. Yash Garg, learned counsel for the respondent no.2 and Shri S.S.Singh, learned A.G.A. for the State.

This criminal appeal under Section 14A (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 03.01.2022 passed by learned Special Judge, SC/ST Act, Agra in Bail Application No.7522 of 2021, arising out of Case Crime no.328 of 2021, under Sections 307, 323, 324, 325, 504 and 506 I.P.C. and Section 3(2)(V) of SC/ST Act, Police Station-Achhnera, District-Agra. The appellant is languishing in jail since 18th November, 2021.

The present criminal appeal in which the pleadings between the parties have been exchanged and the matter is ripe for final submission, has been nominated to this Bench under the order of the Hon'ble The Chief Justice dated 10th July, 2023.

Facts in short as per the case of the appellant are that the present first information report has been lodged by one Satish Chandra Kori on 10th October, 2021 at 09:50 a.m. against four named accused persons including the appellant alleging therein that the incident occurred on 05.10.2021 at around 8:00 a.m. in the morning. The brother of the informant, namely, Vimal had gone to Pappu's puncture shop at Achhnera near Pahad Line Beej Godam to get the puncture of tire of his motorcycle repaired. When the brother of the informant was busy in repairing the puncture of tire of his motorcycle, then suddenly, as per the pre-plan in criminal conspiracy, all the accused persons, having lathi and sticks in their hands came along with the accused Tejeshwar, who was having knife in his hand and made an attack on Vimal with intention to kill him and they also insulted with caste related words like bastard Korea. They also used abusive language. With the intention to kill the brother of the informant, all the above mentioned persons assaulted him repeatedly with

sticks and knives, which he got seriously injured and fell on the ground in a faint state. Hearing the noise, the informant and nearby people like Rameshwar, Pawan, Bahadur etc. reached the spot, then all the above accused persons ran away threatening that if he go to testify in the ongoing case, they would kill him. It is further alleged that all the accused persons are of criminal nature, they had shot his younger brother Pawan Kumar in the stomach some time ago also. Whose case is going on in the District Court, Agra, in which the testimony was to be held in the court on the next date. Due to the said previous enmity, all the accused persons have again committed that act.

Submission of the learned counsel for the appellant is that it is no doubt true that the injured Vimal has sustained grievous injuries on his body as per his medical examination report but it is also admitted from the version of the first information report that general role has been attributed to all the assailant. It is only in the statement of the injured Vimal recorded under Section 161 Cr.P.C. that the specific role has been assigned to the co-accused Beenu for causing knife blow upon the injured. In that statement, it has been stated that the rest of the accused persons have assaulted him by lathi and danda. Further submission is that all the witnesses either independent or interested witness have stated in their statements recorded under Section 161 Cr.P.C. that they have not seen the incident on their own eyes. They are hear-say witnesses. It is next submitted that the injury report indicates that the injured has sustained six injury over his person and out of which there are two incised wound over the sculp deep and another entry wound on the right side on chin of libia. As per the opinion of the doctor the injuries are grievous in nature but not life threatening. The specific role has been attributed to co-accused Beenu and rest of the accused has assigned general role of assault.

Last submission of the learned counsel for the appellant that the co-accused Govind, who has been assigned the general role of causing injuries to the injured Vimal has already been enlarged on bail by a Coordinate Bench of this Court vide order dated 3rd June, 2022 passed in Criminal Appeal No. 837 of 2022 (Govind Vs. State of U.P. & Another). The case of the present appellant is more or less identical to that of the aforesaid co-accused. As such, the present appellant is also liable to be enlarged on bail.

Though the appellant has criminal history of 11 cases, but the all of them have been satisfactorily explained in the affidavit accompanying the present appeal as also in the supplementary affidavit. It is next contended that there is no possibility of the applicant of fleeing away from the judicial process or tampering with the witnesses and in case, the

applicant is enlarged on bail, the applicant shall not misuse the liberty of bail.

The learned A.G.A. and the learned counsel for the complainant have vehemently opposed the bail application by making a mention that since appellant has got a criminal history of 11 cases of same nature and he is an habitual offender, he is not entitled to any indulgence from this Court. However, they could not dispute the aforesaid factual aspect of the matter.

In rejoinder, learned counsel for the appellant submits that if the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused. In support of that submission, learned counsel for the appellant has relied upon the judgment of the Apex Court in the case of **Prabhakar Tewari Vs. State of U.P. & Another** reported in 2020 (11) SCC 648, wherein it has been held that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

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

Considering the nature of the offence, material/evidence brought on record, complicity of the accused, severity of punishment, the **long period of incarceration of the accused-applicant i.e. for more than two years**, the submissions made by the learned counsel for the parties as well as the dictum of Apex Court referred to above, let the appellant involved in aforesaid case crime be released on bail on his furnishing a personal bond and two local sureties each of the like amount to the satisfaction of the court concerned, subject to the following conditions:-

(i) The applicant/appellant 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 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 applicant/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 applicant/appellant misuses the liberty of bail

during trial 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 applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v). 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.

(vi). The applicant shall not leave India without the previous permission of the Court.

(vii). In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

(viii) The applicant/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 absence of the applicant/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.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the present criminal and must not be construed to have any reflection on the ultimate merits of the case.

With the above directions, the present criminal appeal stands **disposed of.**

(Shiv Shanker Prasad, J.)

Order Date :- 29.11.2023

Sushil/-