

**Court No. - 85**

**Case :-** CRIMINAL APPEAL No. - 1619 of 2023

**Appellant :-** Om Prakash Yadav

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Shri Krishan Yadav

**Counsel for Respondent :-** G.A., Ashutosh Gupta

**Hon'ble Mayank Kumar Jain, J.**

Heard learned counsel for the appellant, Sri Ashutosh Gupta, learned counsel for the informant/opposite party no.2, learned Additional Government Advocate for the State of U.P. and perused the record.

This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant with the prayer to set aside the bail rejection order dated 02.02.2023 passed by learned Special Judge (SC/ST Act), Mathura in Bail Application No. 478 of 2023, arising out of Case Crime No. 528-A of 2012, under Sections 147, 148, 149, 302, 307 IPC and Section 3 (2) V of SC/ST Act, Police Station Vrindavan (Jait), District Mathura.

As per prosecution version on 14.06.2012 at around 9 pm, some female members of the informant had gone to ease themselves, they were prevented by the accused persons. Appellant alongwith other co-accused started abusing them. When informant side objected them, appellant alongwith other fired on the brother of informant Lokesh as a result of which he sustained injuries. Two female members of the informant also got injured in the incident.

Learned counsel for the appellant argued that the appellant is an old aged person and he has been falsely implicated in this case. There is a cross version of the incident. From the side of the appellants, one Pramod lodged the FIR as Case Crime No.528 of 2012 under sections 147, 149, 307, 336 IPC against five named accused persons in which there were two injured persons namely Pramod and appellant. The injuries sustained from the side of informant were explained by the appellant. It is further submitted that witness Pooran is not a witness of F.I.R. and his statement was recorded after six months of the incident who attributed the role of firing to the present appellant. It is further submitted that no offence under SC/ST Act is made out against the appellant as no specific words are mentioned by the prosecution by which the

appellant addressed the informant. The next submission is that police after the investigation in case crime no.528A of 2012, eventually submitted the final report and when same was protested, then, learned trial Judge has summoned the appellants in exercise of power under section 190(1)(b) of Cr.P.C. It is further contended that general role has been attributed to all the accused persons. It is further submitted that deceased-Lokesh Kumar has sustained one injury on the non-vital part according to the doctor, therefore, the same was not sufficient to cause his death. It is further submitted that as per the site plan firing was made from a distance of 16 feet, therefore, the injury as a shape of blackening and tattooing is not possible as noted in the post-mortem report. The injury sustained by the appellants are on vital part such as chin, mouth, chest, abdomen etc. which cannot be manufactured. It is very difficult to decide as to who is the aggressor of the said fight between two groups. It is also submitted that so far as the F.S.L. report with regard to the licensee gun of the appellant is concerned, the F.S.L. report dated 11.10.2023 does not corroborate the version of prosecution. It is also submitted that co-accused Phool Chand, Dalchand and Sanajy have already been granted bail by the co-ordinate Bench of this Court vide order dated 05.03.2020 passed in Criminal Appeal no. 723 of 2020. The criminal history of the appellant has been explained in para- 3 to 9 of supplementary affidavit filed in support of bail application. Lastly, it is submitted by learned counsel for the appellant that there is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant is languishing in jail since 27.01.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the early disposal of the case.

Per contra, learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid factual aspects of the matter.

Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, this Court is of the view that the appellant has made out a case for bail. The Court below erred in rejecting the bail application. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

Accordingly, the appeal is **allowed** and the impugned order rejecting the bail application of the appellant is set-aside.

Let the appellant, namely, **Om Prakash Yadav** involved in the above Case be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

- (i) The appellant will not tamper with the evidence during the trial.
- (ii) The appellant will not pressurize/intimidate the prosecution witness.
- (iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.
- (iv) The appellant 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 appellant 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.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

**Order Date :- 16.10.2023**

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