

Court No. - 85

Case :- CRIMINAL APPEAL No. - 7853 of 2023

Appellant :- Shivam

Respondent :- State of U.P. and Another

Counsel for Appellant :- Atul Kumar Singh

Counsel for Respondent :- G.A.,Jitendra Kumar,Keshav Hari
Dixit,Purushottam Dixit

Hon'ble Mayank Kumar Jain,J.

Supplementary affidavit filed today by learned counsel for the informant is taken on record.

Heard learned counsel for the appellant, learned counsel for the informant, learned Additional Government Advocate for the State of U.P. and perused the record.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to set aside the impugned order dated 07.12.2022 passed by the Special Judge, SC/ST Act, Court No. 2, Etawah in Case Crime No. 178 of 2022, under Sections 147, 302, 504, 307, 34 of IPC, and Section 3(1)(R), 3(2)(V) and 3(2)(5Ka) of SC/ST Act, Police Station Friends Colony, District Etawah.

According to the prosecution case on 18.05.2022 at 5 am appellant-accused along with five other named co-accused persons met with the informant's father. They stopped him and hurled derogatory abuses relating to his caste and threatened to kill him. When the informant's father tried to escape from there, the accused persons with the intention to kill him, hit him by an XUV Car causing his death and ran away. Appellant-accused along with her mother, co-accused Urmila Devi exhorted the other co-accused persons to kill the informant's father by crushing him by the vehicle. Informant and her uncle were moving in a motorcycle behind his father, who witnessed the incident.

Learned counsel for the appellant submits that appellant is innocent and has been falsely implicated in this case. It is submitted that the only role assigned to the appellant as per the F.I.R is that he made firing with fire arm weapon at the time when he was fleeing from the place of occurrence. None of the person

from the informant side sustained fire arm injury. The role of crushing from the vehicle is assigned to co-accused Vishal. It is also submitted that co-accused Shalini and Urmila have been granted bail vide order dated 17.02.2023 and 10.05.2023 passed in Criminal Appeal Nos. 5330 of 2022 and 1044 of 2023 respectively. The criminal history of appellant has been explained through supplementary affidavit. Appellant is languishing in jail since 19.05.2023 having no criminal history. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. assisted by the learned counsel for the informant have vehemently opposed the prayer for grant of bail to the appellant and submitted that the deceased sustained as much as 14 injuries on his person. The appellant is actively involved in the incident and made firing with fire arm weapon upon the informant and the person accompanying the informant. The role of the co-accused Shalini and Urmila is not similar to the present appellant. The appellant was also sitting in the same vehicle which was driven by co-accused Vishal who caused the death of the deceased.

Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the active participation of the appellant in the commission of crime, I do not find it fit case for bail.

Since the trial court has passed the impugned order after appreciating the evidence available on record, there is no occasion to interfere with the finding of fact recorded by the trial court, hence, the present criminal appeal lacks merit and deserves to be dismissed.

Accordingly, the criminal appeal is dismissed.

Order Date :- 6.12.2023

PS