

**Court No. - 85**

**Case :-** CRIMINAL APPEAL No. - 9294 of 2023

**Appellant :-** Vipul

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

**Counsel for Appellant :-** Kapil Tyagi

**Counsel for Respondent :-** G.A.

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

Affidavit of compliance filed by learned A.G.A. is taken on record.

Learned A.G.A. submits that notice upon the informant/opposite party no.2 has been duly served but no one appears on his behalf.

Heard learned counsel for the appellant and 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 anticipatory bail rejection order dated 04.08.2023 passed by learned Additional Sessions Judge/Special Judge (SC/ST Act), Hapur in Anticipatory Bail Application No. 2323 of 2023, arising out of Case Crime No. 748 of 2022, under Sections 279, 323, 504, 506, 352, 427 IPC and Section 3(2)(Va) of SC/ST Act, Police Station Hapur Nagar, District Hapur.

As per prosecution version, on 31.08.2022 at around 6.45 am the son of the informant namely Mohit was going to Hapur to attend coaching by his motorcycle. When he reached near the house of appellant, the appellant was backing his tractor and while backing the same speedily and negligently, the same was collided with the motorcycle of son of the informant. After getting down from his tractor, appellant started abusing the son of the informant by addressing him with the caste related words. At around 7.15 am on the same day, informant was going to his brother's house by his motorcycle. When he reached near appellant's house, he stopped the informant and kicked his motorcycle due to which he fell down. Appellant abused him by addressing the caste related words. Appellant had also beaten him by kick and fists.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case due to village party-bandi. It is further submitted that informant in his statement recorded under Section 161 Cr.P.C. stated that he as well

as his son had not received any injury in the incident. They both refused to get themselves medical examined which reveals that no such incident ever took place. Both the injured in their statements during investigation did not make any allegation against the appellant that he addressed them with caste related words. So far as statements of other witnesses are concerned, the said statements were recorded after more than one month of the incident. 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. In case the appellant is released on anticipatory bail, he will not misuse the liberty of anticipatory bail and will cooperate in the early disposal of the case.

Per contra, learned A.G.A. opposed the prayer for bail.

Considering the facts and circumstances of the case, submissions made by learned counsel for the appellant/applicant as well as learned A.G.A., the perusal of record and without commenting on the merits of the case, the appellant/applicant is entitled to be released on anticipatory bail in this case for the limited period considering the exception considered by the Hon'ble Supreme Court in the case of **Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC Online SC 98**.

In the event of arrest of the appellant/applicant-**Vipul** shall be released on anticipatory bail in the aforesaid case till conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

(i) The appellant/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 from disclosing such facts to the Court or to any police office;

(iii) The appellant/applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

In default of any of the conditions, the Investigating Officer is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

**Order Date :- 12.10.2023**

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