

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9199 of 2023

Appellant :- Mohd. Zeeshan

Respondent :- State of U.P. and Another

Counsel for Appellant :- Zafar Abbas, Mohd Tazim

Counsel for Respondent :- G.A., Kaveri Singh, Rakesh Kumar Gupta

With

Case :- CRIMINAL APPEAL No. - 9813 of 2023

Appellant :- Mohd. Faisal

Respondent :- State Of U.P. And Another

Counsel for Appellant :- Janardan Yadav

Counsel for Respondent :- G.A., Kaveri Singh, Rakesh Kumar Gupta

With

Case :- CRIMINAL APPEAL No. - 9210 of 2023

Appellant :- Shahbaj

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rajesh Kumar

Counsel for Respondent :- G.A., Kaveri Singh, Rakesh Kumar Gupta

With

Case :- CRIMINAL APPEAL No. - 9524 of 2023

Appellant :- Mohammad Sher Ali @ Sheru

Respondent :- State of U.P. and Another

Counsel for Appellant :- Viveka Nand Rai, Sanjeev Kumar Rai

Counsel for Respondent :- G.A., Kaveri Singh, Rakesh Kumar Gupta

With

Case :- CRIMINAL APPEAL No. - 9320 of 2023

Appellant :- Wajid

Respondent :- State of U.P. and Another

Counsel for Appellant :- Zafar Abbas, Mohd Tazim

Counsel for Respondent :- G.A., Kaveri Singh, Rakesh Kumar Gupta

With

Case :- CRIMINAL APPEAL No. - 10707 of 2023

Appellant :- Sakib

Respondent :- State of U.P. and Another

Counsel for Appellant :- Radha Kant Singh, Jay Shree Tripathi
Counsel for Respondent :- G.A., Kaveri Singh, Rakesh Kumar Gupta

Hon'ble Mayank Kumar Jain, J.

1. Counter affidavit filed by learned A.G.A. is taken on record.
2. Heard learned counsel for the appellants, Sri Rakesh Kumar Gupta and Ms. Kaveri Singh, learned counsel for the informant, learned Additional Government Advocate for the State of U.P. and perused the record.
3. Since all the aforesaid criminal appeals arise out of same case crime number, therefore, the same are being heard and decided together by a common order.
4. These criminal appeals under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act have been preferred by the appellants with the prayer to set aside the bail rejection orders dated 16.08.2023, 28.08.2023, 16.08.2023, 16.08.2023, 16.08.2023 and 16.08.2023 passed by learned Special Judge (SC/ST Act) Azamgarh arising out of Case Crime No. 327 of 2023, under Sections 307, 323, 352, 504, 34 IPC and Sections 3 (1) (Da), 3 (1) (Dha) and 3 (2) 5 of SC/ST Act, Police Station Nizamabad, District Azamgarh.
5. The case of the prosecution as per F.I.R. is that son of the informant namely Amit Sonkar along with his three friends Santosh Sonkar, Subham Sonkar and Jogesh Sonkar were returning to their home on 22.07.2023 at around 9 pm from Mandi. At Thana crossing appellants Wajid, Mohd. Sher Ali @ Sheru, Mohd. Faisal, Shahbaz and Sakib along with 15 to 20 unknown persons attacked on them in which they got seriously injured. The son of the informant and his friends sustained injury on their head, hands and

other part of the body. The appellants were using caste related words against them.

6. It is submitted that appellant Mohd. Zeeshan is not named in the first information report.

7. Learned counsel for the appellants argued that the appellants are innocent and they have been falsely implicated in this case. It is further submitted that injuries sustained by injured Jogesh Sonkar, Subham Sonkar and Santosh Sonkar were opined to be simple in nature. The injury no.1 which is allegedly caused on left skull on the head of injured Amit Sonkar was advised for X-ray and depressed fracture was seen in left frontal parietal region of skull bone. It is also submitted that a planted recovery of iron punch is shown from the possession of appellant Sakib and wooden sticks from appellant Zeeshan and Sheru @ Sher Ali. Piece of bricks were also shown to be recovered from the possession of appellant Sheru @ Sher Ali. It is also submitted that general role has been assigned in the F.I.R. as well as in the statements of eye witnesses and injured. Therefore, it cannot be said that who was the author of the injury sustained by the injured Amit Sonkar over his head.

8. It is also submitted that there is no recovery either on the pointing out or from the possession of appellants Wajid, Shahbaz and Faisal. It is further submitted that incident took place as a result of sudden fight between informant and appellants since motorcycles of both the parties collided with each other and attempt was made to give colour this incident as communal incident.

9. Appellants Shahbaz, Sheru @ Sher Ali and Faisal has no criminal history to their credit. Appellant Sakib has criminal history of one case which has been explained in para-9 of affidavit

of criminal appeal.

10. Learned counsel for the appellants submitted that no weapon has been assigned in the F.I.R. by the informant and during his statement recorded under Section 161 Cr.P.C., he did not attribute specific role to anyone. The appellants have no motive or intention to commit the crime. It is further submitted that eye witness Brajesh has assigned specific role to appellant Sheru @ Sher Ali attacking on injured Amit Sonkar. The recovery of iron punch from the appellant Sakib is planted and is made from an open place, therefore, it cannot be relied upon. The injured persons have also assigned general role to the appellants.

11. Per contra, learned A.G.A. assisted by learned counsel for the informant vehemently opposed the prayer for bail and submitted that in this incident four persons sustained injury. The age of the injured Amit Sonkar is 13 years and in his statement he stated that after receiving injury over his head he immediately became unconscious. Later on his surgery was conducted and at the time of statement he was not feeling comfortable. It is submitted that eye witness Durgesh Sonkar, Brajesh Sonkar, Nand Lal Sonkar, Jogendra Sonkar have attributed specific role to appellant Sakib having armed with iron punch and he exhorted the other appellants to attack upon the injured persons. It is also submitted that charge sheet has been filed after investigation. Injury sustained by injured Amit over his head was fatal. Appellants in furtherance to their common object had beaten the injured persons mercilessly.

12. 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 except the appellant Shakib, all the appellants namely Mohd. Zeeshan, Mohd.

Faisal, Shahbaj, Mohd. Sher Ali @ Sheru and Wajid have made out a case for bail. The Court below erred in rejecting their bail applications. The impugned orders suffers from infirmity and illegality and the same are liable to be set-aside and the appeals filed on behalf of appellants namely Mohd. Zeeshan, Mohd. Faisal, Shahbaj, Mohd. Sher Ali @ Sheru and Wajid are liable to be allowed.

13. Accordingly, the appeals are **allowed** and the impugned orders rejecting the bail applications of the appellants namely Mohd. Zeeshan, Mohd. Faisal, Shahbaj, Mohd. Sher Ali @ Sheru and Wajid are set-aside.

14. Let the appellants, namely, **Mohd. Zeeshan, Mohd. Faisal, Shahbaj, Mohd. Sher Ali @ Sheru and Wajid** involved in the above Case be released on bail on furnishing a personal bond and **Two Heavy Local 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 so that their presence may be ensured during investigation/trial.

(i) The appellants will not tamper with the evidence during the trial.

(ii) The appellants will not pressurize/intimidate the prosecution witness.

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

(iv) The appellants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

(v) The appellants 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.

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

16. So far as the Criminal Appeal of the appellant Sakib is concerned, since the trial court has passed the impugned order dated 16.08.2023 in Bail Application No. 1003849 of 2023 after appreciating the evidence available on record, there is no occasion to interfere with the finding of fact recorded by the trial court. Considering the facts and circumstances of the case and the role of appellant Sakib as stated by eye witnesses and recovery made from his possession, the criminal appeal filed on behalf of appellant Sakib lacks merit and deserves to be dismissed.

17. Accordingly, the criminal appeal filed on behalf of appellant Sakib is **dismissed**.

Order Date :- 31.10.2023

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