

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9331 of 2023

Appellant :- Kallu Sharma

Respondent :- State of U.P. and Another

Counsel for Appellant :- Narendra Kumar

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

List revised.

As per office report notice upon the informant/opposite party no.2 has been personally served but no one appears on his behalf.

Heard learned counsel for the appellant, 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 25.08.2023 passed by learned Special Judge SC/ST (P.A.) Act, Jhansi in Bail Application No. 1836 of 2023, arising out of Case Crime No. 161 of 2022, under Sections 147, 148, 149, 341, 323, 504, 506, 325 IPC and Sections 3 (2) 5 Ka of SC/ST Act, Police Station Baruasagar, District Jhansi.

As per prosecution version, on 31.07.2022 at around 1.45 pm in the noon, appellant alongwith other named accused and some unknown persons had beaten the son of the informant namely Vikash with wooden stick and iron chain as a result of which he sustained grievous injuries

Learned counsel for the appellant argued that the appellant has been falsely implicated in this case. It is further submitted that as per the allegation of first information report, there was pre-existing enmity in between the co-accused Gopi Kushwaha and son of the informant. It is further submitted that general role of assault has been attributed to all the accused persons, therefore, it cannot be said that who caused the fatal injury on the injured. It is further submitted that no motive has been assigned to the appellant. It is further submitted that no recovery has been shown either on the pointing out of the appellant or from his possession. It is further

submitted that appellant has one case criminal history in which he was implicated after the present case. 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 07.08.2023 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, **Kallu Sharma** 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 :- 12.10.2023

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