

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9521 of 2023

Appellant :- Balakram

Respondent :- State of U.P. and Another

Counsel for Appellant :- Gaurav Singh Tomar, Subhash Gosain

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

Compliance affidavit filed today by learned A.G.A is taken on record.

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 impugned order dated 01.09.2023 passed by learned Additional Session Judge/Special Judge (SC/ST Act), Jalaun at Orai in Bail Application No. 1404 of 2023, arising out of Case Crime No. 243 of 2023, under Sections 307, 323, 504, 506 I.P.C., and Section 3(2) (5) of SC/ST Act, Police Station Kotwali Kalpi, District Jalaun.

There is an allegation in the F.I.R against the appellant that on 26.07.2023 at around 2:00 p.m, the buffalo of the informant entered into the field of appellant. The appellant objected and hurled caste related abuses to the informant. Appellant assaulted him with an axe. On raising alarm witnesses came there. Appellant fled away from there giving threat of life to the informant .

Learned counsel for the appellant submits that appellant is innocent and have been falsely implicated in this case. The F.I.R has been lodged on the basis of wrong facts, no such incident took place. The injured suffered single injury which was opined to be simple in nature. The informant and witnesses Navin Kumar, Santosh Kumar, Pramod Singh have stated in their statement that the appellant gave repeated blow to the informant but this statement is not supported with the medical evidence. Single injury is shown on the person of the injured. So far as the recovery of the axe on the pointing out of the appellant is concerned, it is planted. The appellant is languishing in jail since 28.07.2023 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. opposed the prayer for bail and submitted that appellant is named in the F.I.R. Blood stained axe has been recovered on the pointing out of the appellant but could not dispute the fact that injured sustained single injury while injured and witnesses have stated that appellant gave repeated blow to the injured and it is also not disputed that nature of injury was opined to be simple in nature.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has not properly considered the case of the appellant. Hence, in view of above consideration, the impugned order passed by the trial court is, hereby, set aside.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court is of the opinion that the appellant is entitled to be enlarged on bail.

Let appellant, **Balak Ram** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) 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.

(ii) The appellant shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence

when the witnesses are present in the trial court.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the appellant, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The criminal appeal is allowed.

Order Date :- 4.12.2023

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