Court No. - 85

Case :- CRIMINAL APPEAL No. - 9538 of 2023

Appellant :- Vijay Pandey
Respondent :- State of U.P. and Another
Counsel for Appellant :- Upendra Kumar Singh
Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

Learned A.G.A has informed that service of notice upon opposite party no. 2 is sufficient. Despite service of notice upon the informant/opposite party no.2, no one has put in appearance 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 09.08.2023 passed by learned Special Judge (SC/ST Act), Pilibhit in Case Crime No. 908 of 2022, under Sections 147, 148, 149, 341, 307, 504, 506, 120-B IPC, Section 3 (2) (5) of SC/ST Act, Police Station Puranpur, District Pilibhit.

As per the version of first information report, on 23.11.2022 at about 09:00 pm, when informant's brother namely Satyapal was returning from market, four named and two unknown accused persons surrounded his brother and assaulted with swords several times as a result of which he received serious injuries. On hearing the noise, the informant and his family members came to save him. Thereafter, accused persons left his brother and abused the informant and his family members by caste related words.

Learned counsel for the appellant argued that the appellant has been falsely implicated in this case. It is further contended that general role has been assigned to all the accused persons. It is further contended that X-ray of injured namely Satyapal has been conduced on 24.11.2022 and supplementary medical report has been prepared on 14.01.2023. According to X-ray report and supplementary medical report, no any bony injury seen and injury nos. 1 and 5 are simple in nature. The X-ray report as well as

supplementary medical report are annexed as Annexure-4. It is further submitted that so far as recovery of sword on the pointing out of appellant is concerned the same is shown after 8 days of the incident from an open place and there is no independent witness of the alleged recovery. It is further submitted that named co-accused Muner Pandey @ Munish Pandey @ Awanish Pandey, Km. Soni Pandey and Mohit Pandey have already been granted bail by this Court vide orders dated 03.05.2023, 04.07.2023 and 06.07.2023 passed in Criminal Appeal Nos.2086 of 2023, 5724 of 2023 and 5826 of 2023 respectively. Apart from it co-accused namely Harsh Verma, Manoj Pandey and Seema Pandey @ Bhabhi have already been granted bail by the co-ordinate Bench of this Court vide orders dated 26.04.2023, 24.04.2023 and 28.04.2023 passed in Criminal Appeal Nos. 589 of 2023, 709 of 2023 and 784 of 2023 respectively.

The appellant does not have any criminal history to his credit. 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 01.12.2022 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, **Vijay Pandey** 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 :- 28.10.2023
PS

Digitally signed by :-
POOJA SHARMA
High Court of Judicature at Allahabad