

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9586 of 2023

Appellant :- Shamim

Respondent :- State of U.P. and Another

Counsel for Appellant :- Indrakesh Kumar Sharma

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

Supplementary affidavit filed on behalf of appellant is taken on record.

List revised.

Despite service of notice upon the informant/opposite party no.2, no one has put in appearance on her 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 28.08.2023 passed by learned Special Judge (SC/ST Act), Kaushambi in Case Crime No. 141 of 2023, under Sections 147, 323, 504, 506 IPC and Section 3(2) va, 3(1) dha of SC/ST Act and 3/5/8 of Cow Slaughter Act, Police Station Karari, District Kaushambi.

As per FIR, the case of prosecution is that on 21.06.2023 at around 3.00 pm, when the daughter of the informant had taken her cows for grazing, the appellant and other accused forcibly had taken away cow of the informant. When the informant asked to return her cow the appellant and other accused beaten her, hurled abuses and addressed with caste related words. On the next day i.e. 22.06.2023 the appellant and other co-accused had slaughtered the cow and kept her head inside the house of the informant.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. General allegations have been made against all the accused persons including the appellant. There is no eye witness of such incident.

There is no medical report which can corroborate the fact that the informant was beaten by the appellant and other co-accused. The criminal history of one case against the appellant has been explained in paragraph-3 of the supplementary affidavit. There is no witness of the fact that the appellant had slaughtered the cow of the informant. It is further submitted that co-accused Channu and Mohd. Vaseem @ Chotku have already been enlarged on bail by this Court vide orders dated 25.08.2023 and 21.09.2023 passed in Criminal Appeal No. 7742 of 2023 and 8739 of 2023 respectively. He further submits that since the role of the appellant is identical to that of the co-accused who have already been enlarged on bail, he is also entitled to be enlarged on bail on ground of parity. 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 18.07.2023 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 appellant, **Shamim**, involved in the above Case be released on bail on furnishing a personal bond and two local and heavy 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 they are accused, or suspected, of the commission of which they are 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 :- 17.11.2023

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