

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10076 of 2023

Appellant :- Danish @ Mister And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- K.S. Ojha

Counsel for Respondent :- G.A., Abhishek Chauhan, Anurodh Tripathi

Hon'ble Mayank Kumar Jain, J.

Rejoinder affidavit filed on behalf of appellants is taken on record.

Heard learned counsel for the appellants, Sri Anurodh Tripathi, learned counsel for the informant/opposite party no.2, 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 appellants with the prayer to set aside the bail rejection order dated 17.08.2023 passed by learned Special Judge (SC/ST Act), Sonbhadra in Bail Application Nos. 1956 of 2023 and 1949 of 2023, arising out of Case Crime No. 111 of 2023, under Sections 147, 149, 307, 504, 506 IPC and 3 (2) 5, 3 (1) Da, 3 (1) Dha of SC/ST Act, Police Station Obra, District Sonbhadra.

As per the version of first information report, on 08.05.2023 at around 7 pm, the brother of the informant namely Krishna Paswan was beaten by the appellant and other named accused persons by *lathi-danda* and sharp-edged weapon punch as a result of which he sustained grievous injuries. He was abused and addressed with the caste related words by them.

Learned counsel for the appellants argued that the appellants are innocent and they have been falsely implicated in this case. It is further submitted there are general allegations against all the accused in the F.I.R. No specific role has been assigned to any of the accused, therefore, it cannot be said that who was the author of the injury sustained by the injured. The injuries sustained by the injured are opined to be simple in nature. It is further submitted that no recovery has been made out on the pointing out of the appellants. It is further submitted that co-accused Shubham Singh

@ Surya @ Baghi and Suhail Azam @ Kallu have already been granted bail by the trial court itself. It is further submitted that appellant no.1 has criminal history of three cases and two cases criminal history against the appellant no.2, which has been explained in paragraph no.13 of the rejoinder affidavit filed in support of appeal. 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 11.08.2023 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 appellants have 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 appellants is set-aside.

Let the appellant, namely, **Danish @ Mister** and **Faiz** 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 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 them 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 :- 4.12.2023/AKT