

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10166 of 2023

Appellant :- Ebali @ Bali And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sushil Kumar Rao

Counsel for Respondent :- G.A.,Ashok Kumar

Hon'ble Mayank Kumar Jain,J.

List revised.

No one appears for the informant/opposite party no.2 even in the revised call.

Heard learned counsel for the appellants, 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 18.07.2023 passed by learned Additional Sessions Judge/Special Judge SC/ST (Prevention of Atrocities) Act, Kushinagar at Padrauna in Bail Application No.1964 of 2023, arising out of Case Crime No. 204 of 2023, under Sections 147, 148, 149, 323, 325, 504, 506, 452, 308, 302 IPC and Section 3 (1) (Da), 3 (1) (Dha), 3 (2) V of SC/ST Act, Police Station Kasya, District Kushinagar.

As per prosecution version, on 08.03.2023 at around 10.30 a.m., appellants alongwith seven other co-accused persons having lathi, danda and iron rod in their hands entered into the house of informant and started abusing her. They also humiliated her by calling her caste related words. When Ramanand, father-in-law of the informant made protest, all the accused persons including the appellant, attacked him with the intention to kill him. In the incident, her father-in-law received grievous head injury caused by Co-accused Nikesh @ Bhola by iron rod. Her cousin and father-in-law Sri Prakash also received head injury caused by co-accused Akhilesh by iron rod. The left hand of Sri Prakash also got fractured in the aforesaid incident. In the aforesaid incident Upendra and Vishwjeet brother-in-law (devar) of the informant also got injured. Father-in-law of the informant succumbed to the injuries sustained by him during his treatment.

Learned counsel for the appellant argued that the appellants are innocent and they have been falsely implicated in this case. Contents of the F.I.R. itself goes to show that there was previous enmity between the parties. As per the allegations of F.I.R. no specific role of assault has been assigned to the present appellants whereas specific role of causing grievous injuries to the injured Ramanand and Sri Prakash were assigned to co-accused Nikesh @ Bhola and Akhilesh respectively. It is further submitted that injured witnesses Vishwjeet Gaud, Upendra Gaud and Sree Prakash in their statements recorded under Section 161 Cr.P.C. have assigned general role of assault against all the accused persons. It is further submitted that similarly placed co-accused Ramesh Sharma and Umesh have already been granted bail by this Court vide orders dated 18.08.2023 and 11.10.2023 passed in Criminal Appeal No. 7590 of 2023 and 8266 of 2023 respectively. The appellants do not have any criminal history to their credit. Lastly, it is submitted by learned counsel for the appellants that there is no chance of the appellants fleeing away from the judicial process or tampering with the prosecution evidence. The appellants are languishing in jail since 11.04.2023 and in case they are released on bail, they 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 appellant is set-aside.

Let the appellants, namely, **Ebali @ Bali** and **Rambadai** 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 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 :- 31.10.2023

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