

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10607 of 2023

Appellant :- Pawan Kumar

Respondent :- State of U.P. and Another

Counsel for Appellant :- Kamal Kumar Keshewani, Priyavrat Tripathi

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

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, Sri Raghvendra Saran Tiwari holding brief of Sri Rajesh Kumar, learned counsel for the informant, 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 30.09.2023 passed by learned Special Judge SC/ST (P.A.) Act), Kaushambi in Bail Application No. Nil of 2023, arising out of Case Crime No. 393 of 2012, under Sections 323, 504, 506, 308 IPC and Section 3 (1) 10 of SC/ST Act, Police Station Pipari, District Kaushambi.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. As per the allegations made in the NCR No. 156 of 2012 opposite no.2/informant was assaulted by the appellant by lathi as a result of which he sustained injuries. It is further submitted that appellant was arrested and released on furnishing a personal bond. Thereafter, matter was investigated and charge sheet came to be filed but no summons were received at the end of appellant. Appellant approached this Court by filing an application under section 482 No. 6533 of 2020 and this Court vide order dated 17.03.2020 directed the appellant to appear and surrender before the court concerned within 30 days and apply for bail. Thereafter, the entire nation came under the grip of Covid-19 Pandemic and appellant could not surrender before the court concerned within time. It is also submitted that X-ray of the injured was done in the private hospital while he was referred to government hospital. It is further submitted that case of the appellant is squarely covered by the judgement of the Apex Court in the Case of **Satendar Kumar**

Antil Vs. Central Bureau of Investigation and Another, reported in (2021) 10 SCC 773. It is also submitted that the maximum punishment for the alleged offences is upto seven years. 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 30.09.2023 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. assisted by learned counsel for the informant opposed the prayer for bail and submitted that appellant is named in the N.C.R.. Eye witness had seen the appellant committing the incident and there is no reason for false implication. It is further contended that appellant is absconding since 2012. It is further contended that X-ray of the injured was conducted and a fracture of parietal bone was noted. It is further submitted that during investigation the allegations with regard to SC/ST Act were found and relevant sections under SC/ST Act were added by the Investigating officer.

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, **Pawan Kumar** 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 :- 4.12.2023

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