

**Court No. - 85**

**Case :-** CRIMINAL APPEAL No. - 10586 of 2023

**Appellant :-** Vishal Yadav And Another

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Akhilesh Singh, Deeksha Singh, Shivam Yadav

**Counsel for Respondent :-** G.A., Ajay Kumar, Jai Singh

**Hon'ble Mayank Kumar Jain, J.**

Supplementary affidavit filed by learned counsel for the appellants is taken on record.

Heard learned counsel for the appellants, learned AGA for opposite party no.1 and learned counsel for the informant and perused the material placed on record.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellants to set aside the impugned order dated 29.09.2023 whereby the Special Judge, SC/ST Act, Jaunpur has rejected the bail application of the appellant moved by him in Case Crime No. 119 of 2022, under Sections 147, 323, 308, 504, 506 of IPC, and Section 3(2)5a of SC/ST Act, Police Station Sarai, Khwaja, District Jaunpur.

The case of the prosecution as per the FIR is that on 01.04.2022 at around 8.30 am appellants with other co-accused hurled caste related abuses to the informant and had beaten with bamboo sticks in which Ankur, Krishnawati, Kishan, Soni, Sangeeta, Aman, Sateesh, Ravi, Arjun, Amit, Vijay Kumar, Nitesh, Abhishek and Anish sustained injuries.

Learned counsel for the appellants has submitted that appellants are innocent and have been falsely implicated in the present case due to village party bandi. Appellant Abhishek is not named in the FIR. His name was disclosed by the informant. There are general allegations in the FIR. No specific role has been assigned to the appellants. It is submitted that no recovery is made from the possession of the appellants. It is submitted that so far as the injuries sustained by the injured persons are concerned, most of the injuries of the injured persons are opined to be simple in nature. It

is also submitted that the offence is punishable below seven years. It is submitted that appellant Vishal has criminal history of one case to his credit which is explained in para 4 of the supplementary affidavit. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellants are languishing in jail since 29.09.2023 having no criminal history. In case, the appellants are released on bail, they will not misuse the liberty of bail.

Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant and argued that in the incident 14 persons sustained injuries but could not dispute the fact that the offence is punishable below seven years.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has not properly considered the case of the appellant. Hence, in view of above consideration, the order of rejection of bail passed by the trial court dated 29.09.2023 is, hereby, set aside.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellants; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court is of the opinion that the appellant is entitled to be enlarged on bail.

Let appellants, **Vishal Yadav and Abhishek Yadav** be released on bail in the aforesaid case crime number on their furnishing a personal bond and **two heavy local & reliable sureties** each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) 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.

(ii) The appellants shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of

Cr.P.C.

(iv) The appellants shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The appellants shall remain present before the trial court on each date fixed, either personally or through their counsel.

(vi) The appellants shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the appellant, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The criminal appeal is allowed.

**Order Date :- 15.12.2023**

Mohit