

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11123 of 2023

Appellant :- Azam And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Vijay Kumar Yadav

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

List has been revised. Despite service of notice upon the opposite party no.2, no one appears on his behalf.

Heard learned counsel for the appellants, learned AGA for opposite party no.1 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 07.10.2023 whereby the Special Judge, SC/ST Act, Siddharth Nagar has rejected the bail application of the appellant moved by them in Case Crime No. 237 of 2023, under Sections 323, 504, 506, 307 of IPC, and Section 3(1)(da), 3(1)(dha), 3(2)5, 3(2)5a of SC/ST Act, Police Station Bansi, District Siddhartha Nagar.

Learned counsel for the appellants has submitted that appellant is innocent and has been falsely implicated in this case. He further submits that co-accused Razia Khatoun and Zahida have already been enlarged on bail by this Court vide order dated 05.12.2023 in Criminal Appeal No.11061 of 2023. He further submits that since the role of the appellants is identical to that of the co-accused who have already been enlarged on bail, they are also entitled to be enlarged on bail on the ground of parity. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellants are languishing in jail since 12.09.2023 & 15.09.2023 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 submits that the allegations involved are very serious in nature but he could not point out any material to the contrary.

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 07.10.2023 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; appellants 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 appellants are entitled to be enlarged on bail.

Let appellants, **Azam and Alam** be released on bail in the aforesaid case crime number on their furnishing a personal bond and two 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 appellants, 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 :- 13.12.2023

Mohit