

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10935 of 2023

Appellant :- Vijay And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Abhay Mishra,Prabhankar Srivastava

Counsel for Respondent :- G.A.,Santosh Kumar Gupta

Hon'ble Mayank Kumar Jain,J.

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

2. Heard learned counsel for the appellants, learned Additional Government Advocate for the State of U.P., learned counsel for the informant and perused the record.

3. 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 18.10.2023 passed by learned Special Judge (SC/ST Act)/Additional District & Session Judge, Sambhal in Bail Application No. 47 of 2023 (Vijay and Another Vs. State of U.P), arising out of Case Crime No.0287 of 2023, under Sections- 323,324, 504 ,307 I.P.C. and Section- 3(2)(V) of SC/ST Act, Police Station- Hayatnagar, District- Sambhal.

4. As per prosecution case, there is allegation in the F.I.R. that on 7/8.09.2023 at about 12:00 in the night, when the informant was returning to his house, appellants along with co-accused Akash hurled and abused him (informant) and had beaten up to him with intention to commit his murder with sharp-edged weapon. Co-accused Akash was armed with a sharp-edged weapon, while appellants had beaten up the informant with kicks and fists. When Mohit tried to save the informant, he was also beaten. Son of the informant Ankush is the eye-witness of the incident, who shot the video of the incident in his mobile.

5. Learned counsel for the appellants contended that the appellants have been falsely implicated in this case. Injury committed on the person of injured/informant Akash Kumar were found to be simple in nature in his supplementary report. Likewise, another injured person Mohit also sustained injuries, but they are caused by co-

accused Akash. The eye-witness Ankush also stated that the appellants assaulted the injured by kicks and fists. No weapon is assigned to be used during the incident. It is a case of malicious prosecution of appellants under the provisions of SC/ST Act. 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 have no criminal history. The appellants are languishing in jail since 08.09.2023 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. Hence, the appellants are also entitled to be enlarged on bail.

6. Per contra, learned A.G.A. as well as learned counsel for the informant opposed the prayer for bail on the grounds that appellants are named in the F.I.R. and injured witness and eye-witness had stated that appellants are actively involved in the incident and had beaten the informant. However, it is not disputed that main role of making assault by sharp-edged weapon has been assigned to the co-accused Akash, while the allegations against the appellants is that they had beaten up the informant with kicks and first and the injuries sustained by the injured/informant are simple in nature.

7. 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.

8. Accordingly, the appeal is **allowed** and the impugned order rejecting the bail application of the appellant is **set-aside**.

9. Let **appellants- Vijay and Deepak**, 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.

10. 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 :- 22.11.2023

Saif