

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10871 of 2023

Appellant :- Akash Saini

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 appellant is taken on record.
2. Heard learned counsel for the appellant, 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 21.10.2023 passed by learned Special Judge (SC/ST Act)/Additional District & Session Judge, Sambhal, 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, appellant along with co-accused Vijay and Deepak hurled and abused him (informant) and had beaten up him with intention to commit his murder with sharp-edged weapon and with kicks and fists. When Mohit tried to save the informant, he was also beaten.
5. Learned counsel for the appellants contended that the appellants have been falsely implicated in this case. It is submitted that injured Akash sustained as much as 5 injuries on his person. Injury no.1 and 2 were kept under observation, however, no abnormality was deducted. Other injuries were found to be simple in nature. No recovery of sharp edged weapon was made on the pointing out or from the possession of the appellant. 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 appellant that there is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant

has no criminal history. The appellant is languishing in jail since 26.09.2023 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. Hence, the appellant is 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 but could not dispute the fact that injuries sustained by the injured are found to be 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 appellant- **Akash Saini**, 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 they are 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.

Order Date :- 11.12.2023/PS