

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11267 of 2023

Appellant :- Rajkumar

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shiv Prakash

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

Compliance affidavit filed today by learned A.G.A is taken on record.

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 appellant to set aside the impugned order dated 16.08.2023 whereby the Special Judge, SC/ST Act, Moradabad in S.S.T No. 326 of 2023, arising out of case crime no. 510 of 2022, under Sections 323, 324, 504, 506 of IPC, and under Sections 3(1)Da, 3(1)Dha, 3(2)(Ka) of SC/ST Act, Police Station Bilari, District Mordabad.

The prosecution case as per the F.I.R is that brother of the informant namely Anil Kumar was abused by the appellant Pappu, thereafter, appellants Pappu and Prem Kishore and other co-accused Rajkumar addressed him with caste related words and had beaten him in which he was seriously injured.

Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. He further submitted that no date, time or place of incident is mentioned. The injury sustained by the injured were simple in nature. It is also submitted that one incise wound was noted by doctor at the time of medical examination but as per the statement of the injured no sharp weapon were used to beat him while it is alleged that he was beaten with wooden stick. It is further submitted that no motive have been assigned to the appellants, there is no independent witness of the incident. It is further submitted that injured was habitual of consuming liquor and he made demand of money from the appellant which was refused. It is further submitted that co-

accused Pappu and Prem Kishore have already been enlarged on anticipatory bail by this Court vide order dated 27.09.2023 in Criminal Appeal No. 8344 of 2023. He further submits that since the role of the appellant is identical to that of the co-accused who have already been enlarged on anticipatory bail, he is also entitled to be enlarged on anticipatory bail on ground of parity. Appellant has no previous criminal history. In case, the appellant is released on anticipatory bail, he will not misuse the liberty and will co-operate in the trial.

Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of anticipatory bail to the appellant but could not dispute the aforesaid factual aspects of the matter.

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. The Court below erred in rejecting the anticipatory 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.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant and without expressing any opinion on the merits of the case and in my opinion prima-facie, the appellants are entitled to be released on anticipatory bail in this case for the limited period considering the exception considered by the Hon'ble Supreme Court in the case of **Sushila Aggarwal Vs. State (NCT of Delhi) 2020 SCC Online SC 98**.

In the even of arrest of the appellant-**Rajkumar** shall be released on anticipatory bail till the conclusion of trial on their furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the concerned court subject to the following conditions:

- (i) 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.
- (ii) The appellant shall not pressurize/intimidate the prosecution witnesses.
- (iii) The appellant shall not leave India without the previous

permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

In case of breach of any of the above conditions, the prosecution shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the appellant.

The criminal appeal is allowed.

Order Date :- 8.12.2023

PS