

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11345 of 2023

Appellant :- Ratan

Respondent :- State of U.P. and Another

Counsel for Appellant :- Piyush Tripathi

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

Compliance affidavit filed today is taken on record. Despite service of notice upon the opposite party no.2, no one appears on his behalf.

Heard learned counsel for the appellants, learned counsel for the respondent and learned AGA for the State 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 19.10.2023 whereby the Special Judge, SC/ST Act, Sonbhadra has rejected the bail application of the appellant moved by him in Case Crime No. 161 of 2022, under Sections 323, 504 IPC, and Section 3(2)(Va), 3(1) dha of SC/ST Act, Police Station Ghorawal, District Sonbhadra.

As per the FIR the case of the prosecution is that on 22.07.2022 at around 12.00 noon when the informant was taken his lunch during the day the appellants along with other person entered his house and hit him with wooden stick and iron rod and addressed the informant with caste related words. Information was given to police on 112 number and thereafter, he was medically examined. It is submitted that in the statement under Section 161 Cr.P.C. The informant /injured narrated the date of occurrence to be 12 July, 2022 while in the FIR the date of occurrence is mentioned as 22.07.2022. The medical examination report of the injured is brought on record in which the date of medical examination is noted as 17.07.2022.

It is submitted by learned counsel for the appellant that appellant is innocent and has been falsely implicated in this case. It is submitted that no abnormality was detected on the basis of x-ray

report. It is submitted that there was dispute with regard to agricultural land and the revenue team was directed to both the parties to remain on their premises. The land which was claimed by the informant does not belong to him. It is submitted that appellant has not addressed the informant with caste related words. It is also submitted that co-accused Shyam Bihari and Dangari have already been granted bail vide order dated 20.07.2023 passed in Criminal Appeal No. 6142 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 bail, he is also entitled to be enlarged on bail on ground of parity. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellant is languishing in jail since 19.10.2023 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 eye witnesses have corroborated the incident as narrated in the FIR.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the court below has not properly considered the case of the appellant. Hence, in view of above consideration, the order of rejection of bail passed by the court below dated 19.10.2023 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 appellant; 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 appellants are entitled to be enlarged on bail.

Let appellant **Ratan** be released on bail in the aforesaid case crime number on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned 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 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 appellant 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 appellant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The appellant 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 :- 8.12.2023

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