

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11551 of 2023

Appellant :- J.P. Jawahar Nishad

Respondent :- State of U.P. and Another

Counsel for Appellant :- Mohd. Samiuzzaman Khan, Tanveer Zafar Khan

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

List revised.

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

Learned A.G.A. submits that despite service of notice upon the informant/opposite party no.2, no one has put in appearance on his behalf.

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

This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant with the prayer to set aside the bail rejection order dated 26.09.2023 passed by learned Additional Session Judge/Special Judge SC/ST (P.A.) Act/, Kushinagar at Padrauna in Bail Application No. 2556 of 2023, arising out of Case Crime No. 16 of 2020, under Sections 323, 504, 506 and 308 IPC and Section 3 (1) (Da) of SC/ST Act, Police Station Hanumanganj, District Kushinagar.

As per prosecution version on 09.02.2020 at around 5 pm appellant alongwith three known accused and 6 to 7 unknown persons assaulted the informant by kick & fists and iron rod as a result of which informant Ramdulare, , Gorakh Sahani and Indrapal received grievous injury. Rs. 3,000/- and wrist watch were also looted by them.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. The first information report has been lodged against four named accused persons, including, the appellant and 6 to 7 unknown persons. General role has been assigned to all the accused persons. No specific role has been assigned to the appellant. During medical

examination the injury sustained by injured Gorakh and Ramdulare were found to be simple in nature while alleged injured Indrapal has not been medically examined. The criminal history of appellant has been explained in para-22 of the affidavit filed in the support of appeal. 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 is languishing in jail since 06.07.2023 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.

Per contra, learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid factual aspects of the matter.

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 appellant has 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.

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

Let the appellant, namely, **J. P. Jawahar Nishad** 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 he is 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.

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 :- 13.12.2023/AKT