

**Court No. - 85**

**Case :-** CRIMINAL APPEAL No. - 11605 of 2023

**Appellant :-** Sandeep Gupta

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Dharmendra Kumar

**Counsel for Respondent :-** G.A., Upendra Kumar Mishra

With

**Case :-** CRIMINAL APPEAL No. - 11614 of 2023

**Appellant :-** Kamlesh @ Shailesh Gupta

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Dharmendra Kumar

**Counsel for Respondent :-** G.A., Upendra Kumar Mishra

**Hon'ble Mayank Kumar Jain, J.**

Since both the aforesaid appeals arise out of same case crime number, therefore are being heard and decided together.

Heard learned counsel for the appellants, Sri Upendra Kumar Mishra, learned counsel for the informant, 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 appellants with the prayer to set aside the bail rejection order dated 03.11.2023 passed by learned Additional Sessions Judge/Special Judge SC/ST (P.A.) Act, Kushi Nagar in Bail Application Nos. 3212 of 2023 and 3274 of 2023, arising out of Case Crime No. 497 of 2020, under Sections 147, 323, 324, 308, 504, 506, 452 IPC and Sections 3 (1) Da, 3 (1) Dha of SC/ST Act, Police Station Patherwa, District Kushi Nagar.

As per prosecution version on 07.10.2020 at around 7:00 pm, when female members of the informant were sitting outside the house, appellants alongwith other co-accused armed with wooden sticks and iron rod came to the house of the informant and started abusing by addressing them with caste related words and also forcibly entered into the house of the informant. They assaulted Mukesh and Abhishek as a result of which they sustained grievous injuries. Informant, his mother namely Basmati, Girja Devi and son Virendra also got injured in the aforesaid incident.

Learned counsel for the appellants argued that the appellants are innocent and they have been falsely implicated in this case. The incident is said to have taken place on 07.10.2020 while an application under Section 156 (3) Cr.P.C. was filed after 22 days of the incident before the Court concerned on 29.10.2020 and F.I.R. was lodged on 23.12.2020. No explanation was given by the informant in this regard. It is further submitted that as per the opinion of doctor, the injury sustained by injured Abhishek and other injured were found to be simple in nature. The C.T. scan of injured Abhishek was also found to be normal. It is also submitted that there is a cross version of the aforesaid incident and a complaint from the appellants' side filed before the court concerned which has been registered as Complaint Case No. 620 of 2021 (Shiv Narain Vs. Naresh Prasad) in which the accused Naresh Prasad and Ramesh from the side of informant were summoned to face trial by the trial court. It is further submitted that co-accused Ramgyan Gupta, Shiv Narayan Gupta and Heera Gupta have already been granted bail by this court vide order dated 16.10.2023 passed in Criminal Appeal No. 8076 of 2023. The appellants do not have any criminal history to their credit. 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 are languishing in jail since 26.10.2023 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.

Per contra, learned A.G.A. assisted by learned counsel for the informant opposed the prayer for bail but could not dispute the aforesaid factual aspects of the matter. They admitted that injured Mukesh has attributed specific role of assault by iron rod to co-accused Durgesh and case of the appellants is distinguishable to the case of co-accused Durgesh.

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.

Accordingly, the appeals are allowed and the impugned order rejecting the bail application of the appellants is set-aside.

Let the appellants, namely, **Sandeep Gupta** and **Kamlesh @ Shailesh Gupta** 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.

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 :- 14.12.2023**

**AKT**