

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1217 of 2023

Appellant :- Manoj Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Civil Sectt. Lko.
And Another

Counsel for Appellant :- Gopesh Tripathi

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Case is taken up in the revise call.
2. As per the office report dated 27.05.2023 notice has already been served upon the opposite party No.2 but till date neither any counsel has appeared nor any counter affidavit has been filed on behalf of opposite party No.2.

3. On 03.08.2023, this Court has passed the following order:-

"Learned A.G.A. has filed counter affidavit today in Court. The same is taken on record.

Learned counsel for the appellant prays for and is allowed ten days time to file rejoinder affidavit.

As per Office Report dated 27.05.2023, notice has already been served upon opposite party no.2, but till date neither anyone has put in appearance nor any counter affidavit has been filed on behalf of opposite party No.2.

As a last opportunity ten days and no more time is allowed to the opposite party No.2 to file counter affidavit. Three days, thereafter is allowed to learned counsel for the appellant to file rejoinder affidavit.

Put up this case on 13.09.2023 before the appropriate Bench."

4. Today also, when the case is taken up, there is no one present on behalf of opposite party No.2 neither any counter affidavit has been filed, as such, it appears that opposite party No.2 is not interested in contesting this case. Since the matter pertains to bail and learned counsel for the appellant presses urgency in the matter, therefore, this Court has no other option but to proceed for final arguments to decide the present appeal.
5. Heard Sri Anup Kumar Upadhaya, Advocate, holding brief of Sri Gopesh Tripathi, learned counsel for the appellant, Sri Veer Bhan Singh, learned A.G.A-I for the State and perused the entire record.
6. This Criminal Appeal under Section 14-A (ii) of Scheduled

Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 20.01.2023 passed by learned Special Judge, SC/ST Act, Sitapur in Bail Application No.692/2022; Manoj Singh vs. State of U.P. arising out of F.I.R. No.225/2022, under Section 323 and 304 I.P.C. and Section 3(2)(v) of SC/ST Act, registered at Police Station-Rampurkalan, District-Sitapur.

7. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case due to enmity and village rivalry. No such incident, as alleged by the prosecution, took place. He further submits that as per the version of the F.I.R., on 23.08.2022, the informant alongwith Pradeep, Akshay, Mahesh and Gopi all are resident of same village Purayni, belonging to Behaliya (Schedule Caste) at 6:00 P.M. left their home for poaching birds at village Bambhaur, Hanuman Temple and after spreading net over the trees, he alongwith Pradeep and Gopi were going to drink water. As soon as, they reached near Chaudagra, two persons came at about 10:00 P.M. and asked them as to why they were wandering there and after knowing that they went there to poach birds those persons started assaulting them with iron rod and stick. He further submits that the entire prosecution story is false and fabricated as the appellant was not having any weapon, thereafter, the statement of injured, namely-Uddan was recorded before the court below 16.03.2023, wherein he has not supported the prosecution story and stated that the injuries that were caused to him were caused by village mob and he could not identify any specific person as to who had beaten him or the other injured persons. It is also stated that later on, injured, namely-Gopi (deceased) was treated in Hospital and was sent back home. He further stated that he alongwith other injured persons were beaten up by the village mob with the use of lathi-danda and iron rod, the statement of injured, namely-Uddan is annexed as Annexure No.8 to the affidavit filed in support of the appeal.

8. Learned Counsel for the appellant further submits that the other injured, namely-Pradeep in his statement recorded before the court below on 10.05.2023 has also not supported the prosecution story and has clearly stated that the village mob came and started beating them with lathi-danda and iron rod but he has not assigned any specific role to the appellant, he also stated that he could not identify any person in the village mob, who has beaten him. He further submit that a general allegation of assaulting the injured persons has been leveled against the village mob. Injured, namely-Pradeep also stated that he hid himself in a sugarcane field, thus, he could not identify the appellant and other accused persons, the statement of injured,

namely-Pradeep is annexed as Annexure No.RA-1 to the rejoinder affidavit filed on behalf of the appellant. He further submits that no recovery of any weapon has been made on the pointing out of the appellant or from the possession of the appellant, whatever recovery shown has been made by the police. He further submits that injuries which were shown on the body of the deceased, namely-Gopi was not caused by the appellant, it was caused by the village mob, which chased the deceased as well as the other injured persons as they were catching the birds near a Temple. He further submits that the entire prosecution story is false and fabricated, thus, the present appeal may be allowed and the appellant may be enlarged on bail.

9. Several other submissions in order to demonstrate the falsity of the allegations made against the appellant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the appellant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It has also been pointed out that the accused is not having any criminal history and he is in jail since 25.08.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

10. Learned A.G.A. opposed the prayer for bail, however, he is unable to dispute the contentions raised by learned counsel for the appellant.

11. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also in the absence of any convincing material to indicate the possibility of tampering with the evidence and as per the version of the F.I.R., on 23.08.2022, the informant alongwith Pradeep, Akshay, Mahesh and Gopi all are resident of same village Purayni, belonging to Behaliya (Schedule Caste) at 6:00 P.M. left their home for poaching birds at village Bambhaur, Hanuman Temple and after spreading net over the trees, the informant alongwith Pradeep and Gopi went to drink water. As soon as, they reached near Chaudagra, two persons came at about 10:00 P.M. and asked them as to why they were wandering there and after knowing that they came here for poaching birds those persons started assaulting them with iron rod and stick, these allegations do not corroborate

with the statement of injured, namely-Uddan, which was recorded before the court below 16.03.2023, wherein he has not supported the prosecution story and stated that the injuries that were caused to him were caused by village mob and he could not identify any specific person as to who had beaten him or the other injured persons. It is also stated that later on, injured, namely-Gopi (deceased) was treated in Hospital and was sent back home and further considering the fact that the other injured, namely-Pradeep in his statement recorded before the court below on 10.05.2023 has also not supported the prosecution story and has clearly stated that the village mob came and started beating them with lathi-danda and iron rod but he has not assigned any specific role to the appellant, he also stated that he could not identify any person in the village mob as to who has beaten him, he further leveled a general allegation of assaulting the injured persons by the village mob. Injured, namely-Pradeep also stated that he hid himself in a sugarcane field, thus, he could not identify the appellant and other accused persons and also considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of **Dataram Singh vs. State of UP and another**, reported in **(2018) 3 SCC 22**, this Court is of the view that the learned court below has failed to appreciate the material available on record. The order passed by the court below is liable to be set aside.

12. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 20.01.2023 passed by learned Special Judge, SC/ST Act, Sitapur in Bail Application No.692/2022; Manoj Singh vs. State of U.P. arising out of F.I.R. No.225/2022, under Section 323 and 304 I.P.C. and Section 3(2)(v) of SC/ST Act, registered at Police Station-Rampurkalan, District-Sitapur is hereby **set aside** and **reversed**.

13. Let the appellant, **Manoj Singh** be released on bail in the F.I.R. No.225/2022, under Section 323 and 304 I.P.C. and Section 3(2)(v) of SC/ST Act, registered at Police Station-Rampurkalan, District-Sitapur with the following conditions:-

(i) The appellant shall furnish a personal bond with two sureties each of like amount to the satisfaction of the court concerned.

(ii) The appellant shall appear and strictly comply following terms of bond executed under section 437 sub section 3 of Chapter- 33 of Cr.P.C.:-

(a) The appellant shall attend in accordance with the conditions of the bond executed under this Chapter.

(b) 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, and

(c) 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.

(iii) The appellant shall cooperate with investigation /trial.

(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 court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi) In case, the appellant misuses the liberty of bail during trial, in order to secure his presence, proclamation under section 82 Cr.P.C. is issued and the appellant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(vii) The appellant shall remain present, 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 Cr.P.C. If in the opinion of the trial court 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 against him in accordance with law.

14. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the prayer for bail and must not be construed to have any reflection on the ultimate merit of the case.

15. The trial court is also directed to expedite the trial of the aforesaid case by following the provisions of Section 309 Cr.P.C., strictly without granting any unnecessary adjournments to the parties, in case there is no other legal impediment.

Order Date :- 7.11.2023

Piyush/-