

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1616 of 2023

Appellant :- Gopal Singh @ Devendra Pratap Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. /Prin. Secy. Deptt. Of Home Lko. And Another

Counsel for Appellant :- Hemant Kumar Mishra, Arti Ganguly

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

List has been revised.

Heard Sri Hemant Kumar Mishra, learned counsel for the appellant, Ms. Charu Singh, learned A.G.A. for the State and perused the entire record.

This Criminal Appeal under Section 14-A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 11.05.2023 passed by learned Special Judge, S.C./S.T. Act, District Gonda in Bail Application No.1192 of 2023 (Computerized No. C.N.R. UPGD01-002624-2023), Case Crime No.177/2023, under Sections 147, 148, 149, 307, 326, 504, 506 I.P.C. read with Section 3(2)(V) of S.C./S.T. Act, Police Station Kotwali Dehat, District Gonda, whereby the bail application of the appellant has been rejected.

In spite of service of notice upon opposite party nos.2 and 3 vide office report dated 12.06.2022, no counter affidavit has been filed nor any counsel has appeared on behalf of them.

Thereafter, on 22.09.2023, this Court has passed the following order, which is being reproduced hereunder:-

"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 one week time to file rejoinder affidavit.

As per Office Report dated 12.06.2023, notice has already been served upon opposite party nos.2 and 3, but till date neither anyone has put in appearance nor any counter affidavit has been filed on behalf of opposite party Nos. 2 and 3.

As a last opportunity one week and no more time is allowed to the opposite party Nos.2 and 3 to file counter affidavit. Three days, thereafter

is allowed to learned counsel for the appellant to file rejoinder affidavit.

Put up this case on 05.10.2023 before the appropriate Bench."

Today also when the matter is taken up in the revised call, none appears on behalf of the opposite parties no.2 & 3, as such, it appears that they are not interested to contest this case.

Since learned counsel for the appellant presses urgency in the matter as the matter pertains to bail, therefore, this Court has no other option but to proceed further in the matter.

Learned counsel for the appellant submits that the appellant is innocent who has been falsely implicated in the present case due to village enmity. The father of the injured Amit Kumar Sahu was ex-pradhan of the village and as he was having enmity with the present pradhan, therefore, he implicated the present appellant as he is supporter of the present pradhan.

Learned counsel for the appellant further submits that infact the present appellant was not present on the spot at the alleged time of incident dated 12.04.2023 and even the F.I.R. was lodged on 13.04.2023 after 24 hours of delay. The F.I.R. is lodged against nine named and ten unknown persons who fired with fire arm weapon and desi bombs on the complainant as well as other injured person, namely, Amit Kumar Sahu, however, no specific allegation has been levelled against the present appellant nor any specific weapon has been assigned to the present appellant. Thus, learned counsel for the appellant submits that in absence of any allegation and assignment of any weapon upon the appellant, no case is made out against the appellant.

Learned counsel for the appellant further submits that both the injured i.e. Ram Kuber Dhobi and Amit Kumar Sahu were medically examined and in respect of injured Ram Kuber Dhobi, the doctor stated that there were three injuries of simple in nature and no injury was found on the person of Amit Kumar Sahu except COP left knee joint.

Learned counsel for the appellant further submits that in his statement recorded under Section 161 Cr.P.C., the injured Ram Kuber Dhobi has assigned general role to all the accused persons. He further submits that the another person who was sitting with the Ram Kuber Dhobi, namely, Amit Kumar Sahu has also reiterated the same version of first information report and has not assigned any specific role to the present appellant nor any weapon has been assigned to the present appellant. He further submits that whatsoever the recovery may be, the same has not been made from the present appellant nor from his

pointing out. He further submits that even no independent witness of local locality has been examined.

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 13.04.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned A.G.A. opposed the prayer for bail and submitted that the appellant has committed a cognizable offence, therefore, he is not entitled to be released on bail, however, she is unable to dispute the other contentions raised by learned counsel for the appellant.

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 considering the fact that the father of the injured Amit Kumar Sahu was ex-pradhan of the village and as he was having enmity with the present pradhan, therefore, he implicated the present appellant as he is supporter of the present pradhan; the F.I.R. is lodged against nine named and ten unknown persons who fired with fire arm weapon and desi bombs on the complainant as well as other injured person, namely, Amit Kumar Sahu, however, no specific allegation has been levelled against the present appellant nor any specific weapon has been assigned to the present appellant; both the injured i.e. Ram Kuber Dhobi and Amit Kumar Sahu were medically examined and in respect of injured Ram Kuber Dhobi, the doctor stated that there were three injuries of simple in nature and no injury was found on the person of Amit Kumar Sahu except COP left knee joint; no recovery has been made from the appellant or his pointing out; no independent witness of local locality has been examined and further 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.

Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 11.05.2023 passed by learned Special Judge, S.C./S.T. Act, District Gonda in Bail Application No.1192 of 2023 (Computerized No. C.N.R. UPGD01-002624-2023), Case Crime No.177/2023, under Sections 147, 148, 149, 307, 326, 504, 506 I.P.C. read with Section 3(2)(V) of S.C./S.T. Act, Police Station Kotwali Dehat, District Gonda is hereby set aside and reversed.

Let the appellant, **Gopal Singh @ Devendra Pratap Singh** be released on bail in the Case Crime No.177/2023, under Sections 147, 148, 149, 307, 326, 504, 506 I.P.C. read with Section 3(2)(V) of S.C./S.T. Act, Police Station Kotwali Dehat, District Gonda 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.

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 :- 28.10.2023

Saurabh