

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1793 of 2023

Appellant :- Girja Shankar @ Mahant Dubey And Another

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

Counsel for Appellant :- Kailash Nath Mishra, Ankur Pandey, Rahul Mishra

Counsel for Respondent :- G.A., Firoz Ahmad Khan

Hon'ble Shamim Ahmed, J.

1. Heard Sri Kailash Nath Mishra, learned counsel for the appellant, Sri Ahmad Khan, counsel for the complainant and Sri Ashok Kumar Singh, learned A.G.A.-I.

2. This Criminal Appeal under Section 14-A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been preferred against the impugned order dated 16.5.2023 passed by learned Special Judge, S.C./S.T. Act, Gonda, in Bail Application No. 1358 of 2023, Case Crime No. 121 of 2023, under Sections 307, 323, 324, 325, 504, 506 I.P.C. and Section 3(2)(v) of the S.C./S.T. Act, 1989 Police Station Kotwali Dehat, District Gonda, whereby the bail application of the appellants has been rejected.

3. Learned counsel for the appellant submits that the appellants are innocent and they have falsely been implicated in the present case due to enmity and village party-bandi. Actually, no such incident, as alleged by the complainant, has taken place. It was only ploy by the complainant to get some financial aid by the State Exchequer by lodging the first information report, as the appellants belong to the Higher caste of the society and the opposite party/complainant is an S.C./S.T. category member. It was further argued that from perusal of the first information report as well as the statement of the injured namely Jagdish Gautam it is apparent that only general role has been assigned to all the four accused persons of hitting the injured Jagdish Gautam by Hockey, Danda, Farsa and Banka. None of the appellants was assigned any specific role or any specific weapon, thus, in absence of any specific allegation or weapon assigned to the present appellants no case is made out against them. It is also not clear from the first informatin report or from the statement of the injured himself as to who hit the injured and on which part or how he received injuries.

4. Even though who are alleged to be the witnesses of the alleged incident, namely, Uma Nath Dubey, Bihari, Ramdhani, Nankau and the complainant, in their statements has not stated anything specific regarding the present appellants nor they have assigned any specific weapon in their hands and only general role has been assigned to all the accused persons, who are four in numbers, thus, the counsel submits that none of the witnesses or the complainant has scribed the role of the present appellants. Further, he has argued that after the investigation the name of one of the accused, namely, Sitaram alias Pintoo, was brought by the Investigating Officer, that also falsify the entire prosecution story on the ground that in the first information report as well as in the statements of the witness, general role has been assigned to all the four accused persons.

5. Learned counsel for the appellants has further submits that the medical/injury-report, which has been filed, appears to be forged and fabricated only to give colour to the gravity of the alleged offence. The said injury has occurred due to some other incident, and not in the incident, which has been stated by the prosecution.

6. Several other submissions have also been brought forth regarding the illegality and infirmity of the prosecution case and it has also been highlighted before this Court that due to heavy pendency of the criminal cases before the trial court it will take time and there is paucity of chances that in near future trial of the present case would be concluded expeditiously. It has also been highlighted that the appellants are in detention since 4.4.2023 and has already undergone substantial period of detention and has not any previous criminal antecedent at all. This fact has been stated in para-11 of the affidavit filed in support of the bail-application.

7. Whereas, Sri Firoz Ahmad Khan, learned counsel for the complainant has made an objection regarding the arguments as advanced by the learned counsel for the appellant and has submitted that all the named accused persons in the first information report have collectively beaten the father of the complainant, who was badly injured, but has not disputed this fact that none of the appellants has been assigned any specific role or any specific weapon in their hands and only general role has been assigned by the complainant as well as the other witnesses, but he submits that as the cognizable offence is made out against the appellants themselves, thus, the appellants are not entitled to get any relief from this Court and the appeal deserves to be rejected.

8. Learned A.G.A.-I Sri Ashok Kumar Singh has also made an

agreement with the arguments as advanced by learned counsel for the opposite party No. 2 and he also submits that this appeal be rejected.

9. After considering the arguments as advanced by the learned counsel for the parties and after perusal of the impugned judgment as well as the record, this court finds force in the arguments of the learned counsel for the appellants that this case appears to have been filed with the intention to get some financial aid by the State Exchequer by lodging the first information report, as the appellants belong to the Higher caste of the society and the opposite party/complainant is an S.C./S.T. category member; in the first information report as well as in the statements of the witnesses only general role has been assigned to all the four accused persons and nothing specific has been said against the present appellants nor any specific weapon has been assigned to them nor it is clear from the first information report or from the statement of the injured himself as to who had hit the injured and on which part or how he received injuries; after the investigation the name of one of the accused, namely, Sitaram alias Pintoo, was brought by the Investigating Officer, that also falsify the entire prosecution story on the ground that in the first information report as well as in the statements of the witness, general role has been assigned to all the four accused persons; the injuries shown in the medical/injury report may have been caused in some other incident, nor in the present incident, 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.

10. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 16.5.2023 passed by learned Special Judge, S.C./S.T. Act, Gonda, in Bail Application No. 1358 of 2023, Case Crime No. 121 of 2023, under Sections 307, 323, 324, 325, 504, 506 I.P.C. and Section 3(2)(v) of the S.C./S.T. Act, 1989 Police Station Kotwali Dehat, District Gonda, is hereby set aside and reversed.

11. Let the appellants **Girja Shanker alias Mahant Dubey** and **Suneel alias Incharge** be released on bail in the Case Crime No. 121 of 2023, under Sections 307, 323, 324, 325, 504, 506 I.P.C. and Section 3(2)(v) of the S.C./S.T. Act, 1989 Police Station Kotwali Dehat, District Gonda, with the following conditions:-

- (i) Each of the appellants shall furnish a personal bond with two sureties each of like amount to the satisfaction of the court concerned.
- (ii) The appellants 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 appellants shall attend in accordance with the conditions of the bond executed under this Chapter.
- (b) The appellants shall not commit an offence similar to the offence of which they are accused, or suspect, and
- (c) 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.
- (iii) The appellants shall cooperate with investigation /trial.
- (iv) The appellants shall file an undertaking to the effect that they 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 appellants shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of their absence, the trial court may proceed against them under Section 229-A of the Indian Penal Code.
- (vi) In case, the appellants misuse the liberty of bail during trial, in order to secure their presence, proclamation under section 82 Cr.P.C. is issued and the appellants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.
- (vii) The appellants 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 appellants 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 them in accordance with law.

12. 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.

13. 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.

(Shamim Ahmed, J.)

Order Date :- 29.11.2023

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