

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1894 of 2022

Appellant :- Asgar Ali

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

Counsel for Appellant :- Srees Kumar Srivastava

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Sri Vinod Kumar, Advocate, holding brief of Sri Srees Kumar Srivastava, learned counsel for the appellant and Sri Awadhesh Kumar Pandey, learned Addl. Government Advocate for the State.

2. 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 19.07.2022 passed by learned Special Judge (S.C./S.T. Act)/Addl. Sessions Judge, Court No. 2, Unnao, in Case Registration No. 2022 of 2022, Case Crime No. 642 of 2019, Special Session Trial No. 324 of 2022 under Sections 323, 504, 308 I.P.C. and Section 3(1)(r, s) S.C./S.T. (P.A.) Act, Police Station Kotwali, District Unnao, whereby the bail application of the appellant has been rejected.

3. As per office report dated 30.1.2023, opposite party No. 2/complainant Raju Sonkar has expired as per report of the Chief Judicial Magistrate, Unnao dated 17.1.2023 and notices have already been served upon opposite party Nos. 3 and 4, but no counter affidavit has been filed on their behalf neither any counsel has put in appearance to represent their case. Even today, when the matter is taken up in the revised call, no

counter affidavit has been filed on behalf of opposite party Nos. 3 and 4 neither any counsel is present to represent them.

4. Learned counsel for the appellant submits that the first information report was lodged by the opposite party No. 2 (now deceased) against the appellant and his several other family members of in respect of some incident regarding abduction of the son of the opposite party No. 2/complainant Raju. When the complainant was made by the opposite party No. 2, then the appellant alongwith other family members started abusing him with caste-language and also beaten him, his wife and daughter with *laat-ghoonsa*, *lathi* and *danda* and they received injuries and were medically examined.

5. Learned counsel for the appellant further submits that there is no any specific allegation against the appellant, rather a general allegation has been levelled against all the named accused persons in the first information report, who were total four in number. It has not been stated what weapon used by the appellant in the incident. The injured person/complainant Raju Sonkar, his son, Kiran, wife of the complainant/opp. Party No. 2 and the daughter Monika in their statements have made same allegations against all the named accused persons and they have not ascribed any specific role to the present appellant or any other person named in the first information report and only general allegations have been leveled and none of the accused persons has been assigned any specific weapon. The appellant also has not been assigned any specific weapon by which he hit the injured, thus, the entire prosecution story is nothing, but has been lodged only with the intention to falsely implicate the appellant and his entire family due to enmity and village party-bandi and also with the intention to get some financial benefit by the State Exchequer, as the accused persons belong to the

Upper Caste and the opposite party Nos. 3 and 4 are of the S.C./S.T. Category persons. It was also argued that no case is made out, because as per the version of the first information report the incident took place near the house, which was neither a 'public place' nor there was any 'public view', thus, the provisions of the S.C./S.T. Act are not attracted in the case of the appellant. Even no case is made out under Sections 504, 323, I.P.C., as the prosecution has totally failed to prove the case by any of the witnesses, thus, he prays that the appeal be allowed and the order passed by the Court below be set aside and the appellant be released on bail.

6. 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 24.06.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

7. Sri Awadhesh Kumar Pandey, A.G.A. opposed the arguments as advanced by the learned counsel for the appellant submits that as per the version of the first information report, there is allegation against the appellant and other named accused persons, but he has not disputed the fact that only general allegations have been levelled against the appellant and other named accused persons in the first information report as well as

in the statements of injured and the opposite party No. 2/complainant and he has also not disputed this fact that the appellant has not been assigned any specific role or any specific weapon, but he submits that as cognizable offence is made out against the appellant, thus, he is not entitled to get any relief by this Court, hence, the present appeal be dismissed and the bail-application may also be rejected.

8. After considering the arguments as advanced by the learned counsel for the parties and after perusal of the record and the impugned judgment passed by the Court below, this Court finds force in the arguments of the learned counsel for the appellant that no any specific allegation has been levelled against the appellant, rather general allegations have been levelled against all the named accused persons in the first information report, who were total four in number; it has not been stated what weapon used by the appellant in the incident; all the family members have been implicated in the incident due to enmity and village party-bandi and also with the intention to get some financial benefit by the State Exchequer, as the accused persons belong to the Upper Caste and the opposite party Nos. 3 and 4 are of the S.C./S.T. Category persons; as per the version of the first information report the incident took place near the house, which was neither a 'public place' nor there was any 'public view', thus, the provisions of the S.C./S.T. Act are not attracted in the case of the appellant, 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.

9. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 19.07.2022 passed by learned Special Judge (S.C./S.T. Act)/Addl. Sessions Judge, Court No. 2, Unnao, in Case Registration No. 2022 of 2022, Case Crime No. 642 of 2019, Special Session Trial No. 324 of 2022 under Sections 323, 504, 308 I.P.C. and Section 3(1)(r, s) S.C./S.T. (P.A.) Act, Police Station Kotwali, District Unnao, is hereby set aside and reversed.

10. Let the appellant, **Asgar Ali** be released on bail in the Case Crime No. 642 of 2019, Special Session Trial No. 324 of 2022 under Sections 323, 504, 308 I.P.C. and Section 3(1)(r, s) S.C./S.T. (P.A.) Act, Police Station Kotwali, District Unnao, 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.

11. 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.

12. 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 :- 28.11.2023

A.Nigam