

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2562 of 2023

Appellant :- Karodpati And 3 Others

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

Counsel for Appellant :- Avadhesh Mishra, Gulam Abdul Qadir Rabe, Naseem Ahamad

Counsel for Respondent :- G.A., Amit Kumar Keshari, Kahkashan Zaidi

Hon'ble Shamim Ahmed, J.

1. Counter and rejoinder affidavits have been exchanged, which are available on record.

2. Heard Sri Avadhesh Mishra, learned counsel for the appellant, Miss Kahkasha Zaidi, learned counsel for the opposite party No. 2 as well as Ms. Kamlesh Kumari, learned A.G.A. for the State and perused the entire record.

3. 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 23.08.2023 passed by learned Special Judge, S.C./S.T. Act, Ambedkar Nagar, in Bail Application No. 1223 of 2023, Case Crime No. 146 of 2022, under Sections 147, 148, 323, 504, 506, 452, 325, 308 I.P.C. and Section 3(1)Da, 3(1)Dha, of S.C./S.T. Act, 1989, Police Station Hanswar, District Ambedkar Nagar, whereby the bail application of the appellant has been rejected.

4. Learned counsel for the appellants submits that as per the first information report, which was lodged by the opposite party No. 2, in respect of some minor dispute the appellants and other co-accused persons, armed with lathi-danda and sariya, came to the house of the opposite party No. 2 and started abusing him with caste-language and also started beating him. On his cries, his wife Narain Dei, daughter Pushpawati, Anupam, Jitendra

and Antima rushed to save him. Then one of the accused Niranjani hit the wife of the complainant Narayan Dei on her head and rest of the other named accused persons hit all of them by lathi-danda. In the first information report, seven persons including the appellants were named, but the appellants were assigned a general role of wielding lathi and danda in their hands, whereas as per the medical report of the victim, there were total nine injuries and some of the injuries were shown to be on the head, which were alleged to have been caused by Niranjani, in whose hands the opposite party No. 2-informant as well as injured have shown iron-rod, but the appellants were not shown any weapon. Only general allegation was levelled against them that they were having lathi and danda and they hit the injured as well as the complainant, thus, in absence of any specific role or any specific weapon assigned to the present appellants, it cannot be said that the injuries were caused by hitting of the appellants, whereas in fact the appellants were not present on the spot. Only as they were family members of Niranjani, the main culprit, thus, their names were taken by the complainant to give gravity to the alleged offence. It has been further submitted that there was no any independent eye-witness, who supports the prosecution case nor the other injured Ashok Kumar, Anupam have assigned any specific role to the appellants. They have assigned the role to Niranjani, who hit Narain Dei by iron rod on her head, thus, it has been argued that in absence of any specific allegation or role or weapon, assigned in the hands of the present appellants, the appellants their bail-application may be considered by this Court sympathetically and they may be released on bail.

5. Several other submissions in order to demonstrate the falsity of the allegations made against the appellants 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 appellants that they are ready to cooperate with the process of law and shall faithfully make themselves available before the court, whenever required and are also ready to accept all the conditions which the Court may deem fit to impose upon them. It has also been pointed out that the appellants are not having any criminal history and they are in jail since 23.08.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

6. Miss Kahkashan Zaidi, learned counsel for the opposite party no.2 opposed the prayer for bail and submitted that the appellants alongwith other named accused persons hit the complainant, his wife and two other injured persons badly, but she did not dispute this fact that the main role of hitting by iron-rod is assigned to Niranjana on the head of Narain Dei, but she also did not dispute this fact that the appellants were assigned general role of hitting the complainant and other injured by lathi and danda, but no specific allegation is assigned, and she submits that as *prima facie* offence is made, the appellants are not entitled to get any relief from this Court and the appeal is liable to be dismissed.

7. Learned A.G.A. is also in agreement with the arguments as advanced by the learned counsel for the opposite party No. 2. She submits that the appellants are not entitled to get any relief from this Court and the appeal deserves to be dismissed.

8. 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 seven persons including the appellants were named in the F.I.R., but the appellants were assigned a general role of wielding lathi and danda in their hands, whereas as per the medical report of the victim, there were total nine injuries and some of the injuries were shown to be on the head, which were alleged to have been caused by Niranjana, in whose hands the opposite party No. 2-informant as well as injured have shown iron-rod, but the appellants were not shown having any weapon. Only general allegation was levelled against them that they were having lathi and danda and they hit the injured as well as the complainant, thus, in absence of any specific role or any specific weapon assigned to the present appellants, it cannot be said that the injuries were caused by hitting of the appellants, whereas in fact the appellants are said to be not present on the spot; only as they were family members of Niranjana, the main culprit, thus, their names were taken by the complainant; there is no any independent eye-witness, who supports the prosecution case nor the other injured Ashok Kumar, Anupam have assigned any specific role to the appellants; they have assigned the role to Niranjana, who hit Narain Dei by iron rod on her head, thus, in absence of any specific allegation or role or weapon, assigned in the hands of the present appellants, the appellants their bail-application may be considered by this Court sympathetically; 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 23.08.2023 passed by learned Special Judge, S.C./S.T. Act, Ambedkar Nagar, in Bail Application No. 1223 of 2023, Case Crime No. 146 of 2022, under Sections 147, 148, 323, 504, 506, 452, 325, 308 I.P.C. and Section 3(1)Da, 3(1)Dha, of S.C./S.T. Act, 1989, Police Station Hanswar, District Ambedkar Nagar, is hereby set aside and reversed.

10. Let the appellants **Karodpati, Rajita, Anil and Manoj** be released on bail in the Case Crime No. 146 of 2022, under Sections 147, 148, 323, 504, 506, 452, 325, 308 I.P.C. and Section 3(1)Da, 3(1)Dha, of S.C./S.T. Act, 1989, Police Station Hanswar, District Ambedkar Nagar, 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 his absence, the trial court may proceed against him 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.

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.

(Shamim Ahmed, J.)

Order Date :- 17.11.2023

A.Nigam