

**Court No. - 15**

**Case :-** CRIMINAL APPEAL No. - 2892 of 2023

**Appellant :-** Dheeraj Yadav @ Narendra Kumar

**Respondent :-** State Of U.P. Thru. Prin. Secy. Home, Lko And 7 Others

**Counsel for Appellant :-** Sachin Tiwari

**Counsel for Respondent :-** G.A.

**Hon'ble Shamim Ahmed,J.**

1. Case is taken up in the revised call.
2. Learned A.G.A. has filed counter affidavit, which is taken on record.
3. As per office reports dated 18.11.2023 and 20.11.2023 , in compliance of Hon'ble Court's Order dated 12.10.2023 notice was issued to opposite party Nos. 2 to 8 by R.P.A.D. Neither unserved notice nor the acknowledgement due (A.D.) has been received so far, hence service of notice upon opposite party Nos. 2 to 8 is deemed sufficient.
4. Neither any counter affidavit has been filed on behalf of the opposite party Nos. 2 to 8 has been filed nor any counsel has put in appearance on their behalf, hence it appears that the opposite party Nos. 2 to 8 are not interested to contest the case.
5. Learned counsel for the applicant submits that it is a bail-matter. The applicant has no previous criminal history and he is in jail since 2.6.2023 and the other co-accused have been enlarged on bail.
6. In view of the above, this Court is left with no other option, but to consider this appeal.
7. Heard Sri Sachin Tiwari, learned counsel for the appellant as well as Ms. Charu Singh, learned A.G.A. for the State-opposite party No.1 and perused the record.
8. The pleadings between the parties have been exchanged.
9. The present criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 21.09.2023 passed by the court of Special Judge Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Pratapgarh in Bail Application No. 1651 of 2023, arising out of Case Crime No.45/2022, under Sections

147, 148, 323, 504, 506, 307, 34 I.P.C. and Section 3 (1) (da), 3 (1) (dha), 3(2) (v), 3 (2) (va) S.C./S.T. Act, Police Station Sangramgarh, District Pratapgarh, whereby the bail application of the appellant has been rejected.

10. Learned counsel for the appellant submits that the appellant is innocent has been falsely implicated in the present case. No such incident took place, as alleged by the prosecution. The appellant was not present on the spot at the time of alleged incident. This ground has been taken by the appellant in the affidavit filed in support of the bail application.

11. Learned counsel for the appellant submits that the name of the appellant has been taken by the opposite party No.2 due to enmity and village party bandi.

12. Learned counsel for the appellant submits that as per prosecution story, the informant, namely Indal Pasi had gone to Sangramgarh Market due to some work and on his way back, at about 6.30 p.m. on 27.02.2022, he saw a large number of persons gathering in a group and therefore he stopped there out of curiosity and saw that the 27 accused persons carrying illegal weapons. As soon as the group of accused persons saw him, they asked that how is the informant there as he is a member of a caste who is inimical to them and they stopped him forcefully, however somehow, the information of this alleged incident reached Neeraj Singh alias Shanu, Virendra Mishra, Sarveshwar Kumar, Yuvraj Singh, Alok Pandey, Kaushlendra Bahdur Singh, Akash Singh, Siddharth Gautam, Yuvraj Singh son of Arvind Singh and these persons went to allegedly protect the informant. They allegedly reached the place of incident and started taking the informant along with them, however it is alleged that the accused persons started abusing them and also hurled life threats to this second group of persons including the informant. It is further alleged that the accused Ameer Chandra used an axe "kulhari" and the other accused persons used "lathi/danda" while assaulting the second group of persons resulting in a head injury to Sarveshwar Singh. It is further alleged that the insults based on caste was also hurled at the second group of persons including the informant. The informant has further stated that the alleged incident was witnessed by many passers-by and villagers.

13. Learned counsel for the appellant submits that no specific allegation has been levelled against the appellant. One of the co-accused, namely, Ameer Chandra has been assigned the role of having axe "kulhari" in his hand and other accused persons were assigned general role of having "lathi/danda".The appellant has not assigned specific role or any specific weapon

in his hand, thus in absence of any specific role or specific weapon, it cannot be said that the injuries caused to the injured was caused by the appellant.

14. Learned counsel for the appellant further submits that the other accused persons named in the F.I.R., namely, Ram Swarup and Chavinath Yadav have been granted bail by the court below vide order dated 16.06.2023 passed in Bail Application No. 1601/2023 and Bail Application No. 1518 of 2023 respectively. The copy of the bail orders have been annexed as Annexure SA-1 and SA-2 to the supplementary affidavit filed by the appellant. The other co-accused persons Rama Shanker Yadav, Om Prakash and Padamkant Shukla alias Dhiraj Shukla have been enlarged on bail by this Court vide orders dated 27.9.2023 and 6.11.2023 passed in Criminal Appeal Nos. 3087 of 2022, 1273 of 2023 and 2914 of 2023 and co-accused Mukesh Saroj has been granted bail by this Court in Criminal Misc. Bail Application Nos. 12729 of 2023 vide order dated 30.10.2023. Copy of bail-orders of these co-accused have been filed in Court. Learned counsel for the appellant further submit that the case of the appellant is not on the worse footing than that of the co-accused, who have been granted bail by the court below and by this Court itself, therefore, the appellant may also be enlarged on bail by this Court sympathetically.

15. Learned counsel for the appellant further submits that in case the appellant is enlarged on bail, he shall not misuse the liberty of bail and shall also fully cooperate with the trial. He has further submitted that there is no possibility of the appellant to intimidate or pressurize the witnesses or any other persons acquainted with the facts of the present case.

16. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 21.09.2023 passed by the court of Special Judge Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Pratapgarh in Bail Application No. 1651 of 2023, arising out of Case Crime No.45/2022, under Sections 147, 148, 323, 504, 506, 307, 34 I.P.C. and Section 3 (1) (da), 3 (1) (dha), 3(2) (v), 3 (2) (va) S.C./S.T. Act, Police Station Sangramgarh, District Pratapgarh deserves to be set aside and reversed and appellant be enlarged on bail during pendency of the trial.

17. 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 2.6.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

18. *Per contra*, Learned A.G.A. has opposed the prayer for bail and submits that the involvement of the appellant is almost similar to other co-accused, but has not disputed this fact that a general role has been assigned to the appellant and has not assigned any specific role or specific weapon except one of the co-accused, namely, Ameer Chandra has been assigned the role of having axe "kulhari" in his hand.

19. 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, unlikelihood of early conclusion of trial and also in absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that as per the plain reading of the F.I.R. and on going through the statement of the witnesses either injured or independent witnesses, the appellant has not been assigned any specific role or any specific weapon and after perusal of the injury report; it is not a case of the prosecution that injury was caused by the present appellant; total 27 persons were named in the F.I.R. except one of the co-accused, namely, Ameer Chandra has been assigned the role of having axe "kulhari" in his hand and other accused persons were assigned general role of having "lathi/danda", but none of the injured or independent witnesses have stated this fact that the appellant was having lathi/danda in his hand, who hit the any of the injured, thus in absence of any specific role or specific weapon against the appellant, it cannot be said that the appellant was involved in the present case; the other named accused persons named in the F.I.R., namely, Ram Swarup son of Chotu Saroj and Chavinath Yadav have been granted bail by the court below vide order dated 16.06.2023 passed in Bail Application No. 1601/2023 and Bail Application No. 1518 of 2023 respectively, the other co-accused persons Rama Shanker Yadav, Om Prakash and Padamkant Shukla alias Dhiraj Shukla have been enlarged on bail by this Court vide orders dated 27.9.2023 and 6.11.2023 passed in Criminal Appeal Nos. 3087 of 2022, 1273 of 2023 and 2914 of 2023 and co-accused Mukesh Saroj has been granted bail by this Court in Criminal Misc. Bail Application Nos. 12729 of 2023 vide order

dated 30.10.2023. Copy of bail-orders of these co-accused have been filed in Court, and further considering the fact that appellant is in jail since 2.6.2023 and has now by done a substantial period of detention 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, both the impugned orders passed by the trial court are liable to be set aside.

20. Accordingly, the appeal is **allowed**. Consequently, the order dated 21.09.2022 passed by the court of Special Judge Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Pratapgarh in Bail Application No. 1651 of 2023, arising out of Case Crime No.45/2022, under Sections 147, 148, 323, 504, 506, 307, 34 I.P.C. and Section 3 (1) (da), 3 (1) (dha), 3(2) (v), 3 (2) (va) S.C./S.T. Act, Police Station Sangramgarh, District Pratapgarh is hereby reversed and set aside.

21. Let the appellant, Dheeraj Yadav and Narendra Kumar, be enlarged on bail in Case Crime No.45/2022, under Sections 147, 148, 323, 504, 506, 307, 34 I.P.C. and Section 3 (1) (da), 3 (1) (dha), 3(2) (v), 3 (2) (va) S.C./S.T. Act, Police Station Sangramgarh, District Pratapgarh 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.

22. 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.

23. The trial court is also directed to expedite the trial of the aforesaid case, within a period of one year from today, 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 :- 15.12.2023**

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