

Court No. - 15

Case :- CRIMINAL APPEAL No. - 3342 of 2022

Appellant :- Pankaj

Respondent :- State Of U.P. Thru. The Prin. Secy. Home Deptt.
Civil Sectt. Lko. And 3 Others

Counsel for Appellant :- Arvind Kumar Verma, Neeraj Pandey

Counsel for Respondent :- G.A., Brijesh Kumar Singh, Ravi
Pratap Singh

Hon'ble Shamim Ahmed, J.

List has been revised and the case is being taken up in the revised call of the list.

Heard Shri Arvind Kumar Verma, learned counsel for the appellant and Shri Ashok Srivastava, learned A.G.A. for the State.

Learned counsel for the appellant has served a written notice upon Sri Ravi Pratap Singh, learned counsel for the opposite parties no.2 to 4 about mentioning of the case to be taken up out of turn and the same has been received by him, however, when the case is called out to be taken up, he is not present nor he has filed any counter affidavit till date. The said notice is taken on record.

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

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 05.11.2022 passed by learned Special Judge S.C./S.T. Act, Sitapur in Bail Application No. 572 of 2022, arising out of Case Crime No. 490 of 2022, under Sections 147, 307, 323, 504, 506 I.P.C. and Section 3 (2) (v) S.C./S.T. Act, Police Station Maholi, District Sitapur, whereby the bail application of the appellant has been rejected.

Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case due to enmity and village rivalry. No such incident, as alleged by the prosecution in the F.I.R., took place. The appellant was not present on the spot at the time of alleged incident. His name

was only taken as he was the friend of one of the co-accused named in the F.I.R.

Learned counsel for the appellant submits that the F.I.R. was lodged by the complainant, Mewa Lal, father of the injured Satya Kumar and from perusal of the F.I.R., it is crystal clear that the role of the appellant has been shown along with other named person that they have beaten the injured by lathi and danda and the present appellant has provided the cartridges to the co-accused Hari Nath, who fired but the fire missed and hit the wall and thereafter the pellets hit the injured Kamlesh Kumar and Satya Kumar, who sustained injuries of the bullets pellets and were admitted to hospital. He further submits that as per the medical report they received around ten injuries of the pellets.

Learned counsel for the appellant further submits that there is no allegation against the present appellant that he hit the injured by firearm (rifle) or any other arm, however, role of providing cartridge to the co-accused Hari Nath has been assigned to the present appellant. The statement of the injured Kamlesh and Satya Kumar were also recorded on 25.09.2022 in which they have stated almost the same version of the first information report and submitted that more than 5-6 persons have beaten them, but they have not assigned any weapon, even though lathi and danda has also not been assigned in the hand of the appellant. It was only mentioned that the present appellant has provided cartridge to the co-accused, Hari Nath, who fired by his gun. Thus the role of firing was assigned to Hari Nath and the role of the present appellant is totally distinguishable from the role of Hari Nath.

Learned counsel for the appellant further submits that the allegations in the present case is totally false and fabricated and the name of the present appellant has been taken only to give gravity to the alleged offence.

Learned counsel for the appellant further submits that the co-accused Bhanu has already been enlarged on bail by this Court vide order dated 06.07.2023 passed in Criminal Appeal No.2792 of 2023, the co-accused Govind and Vishal have also been enlarged on bail by co-ordinate Bench of this Court vide order dated 11.07.2023 passed in Criminal Appeal No.3014 of 2022 and the co-accused Rakam Singh has also been enlarged on bail by co-ordinate Bench of this Court vide order dated 11.07.2023 passed in Criminal Appeal No.2989 of 2022. All the bail orders are annexed as R.A.-I to the rejoinder affidavit filed by learned counsel for the appellant. Learned counsel for the appellant further submits that the case of the present appellant is

not on the worse footing than that of the co-accused who have been enlarged on bail, therefore, the present appellant may also be enlarged on bail and consequently the appeal may be allowed.

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 and will not misuse the liberty of bail. It has also been pointed out that the accused is not having any criminal history and he is in jail since 09.09.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of 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.

Per contra, learned A.G.A. for the State-opposite party No.1 opposed the prayer by submitting that Hari Nath has hit the injured by fire arm (rifle), but has not disputed this fact that Kamlesh and Satya Kumar have not assigned any weapon in the hand of the present appellant, however, he submits that role of providing cartridge to the co-accused Hari Nath has been assigned to the present appellant, therefore, the appellant is not entitled to get any relief by this Court and the present appeal may be rejected.

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, 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 no allegation has been assigned to the present appellant that he hit the injured by firearm (rifle) or any other arm and only role of providing cartridge to Hari Nath has been assigned to the present appellant; the injured Kamlesh and Satya Kumar have also not assigned any weapon even lathi and danda in the hands of the appellant and the role of firing was assigned to Hari Nath; further considering the fact that appellant is in jail since 09.09.2022 and has now gone under a substantial period of detention; the co-accused Bhanu has been enlarged on bail by this Court and co-accused Govind, Vishal and Rakam Singh have also been enlarged on bail by co-ordinate Bench of this

Court 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, therefore, the impugned order passed by the trial court is liable to be set aside.

Accordingly, the appeal is **allowed**. Consequently, the order dated 05.11.2022 passed by learned Special Judge S.C./S.T. Act, Sitapur in Bail Application No. 572 of 2022, arising out of Case Crime No. 490 of 2022, under Sections 147, 307, 323, 504, 506 I.P.C. and Section 3 (2) (v) S.C./S.T. Act, Police Station Maholi, District Sitapur is hereby **reversed** and **set aside**.

Let the appellant, **Pankaj**, be enlarged on bail in Case Crime No. 490 of 2022, under Sections 147, 307, 323, 504, 506 I.P.C. and Section 3 (2) (v) S.C./S.T. Act, Police Station Maholi, District Sitapur 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, 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.

Order Date :- 7.11.2023
Saurabh