Court No. - 16

Case :- CRIMINAL APPEAL No. - 2126 of 2024

Appellant :- Sanjay Sharma
Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 2 Others
Counsel for Appellant :- Vijay Pathak,Arun Sinha,Ram Chandra Singh,Vanshraj Dubey
Counsel for Respondent :- G.A.,Vinay Mishra

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the appellant, learned A.G.A. appearing for the State and learned counsel for the complainant as well as perused the record.

This criminal appeal has been filed by the appellant under Section 14A (2) the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to set aside the order dated 29.06.2024 passed in Bail application No.4466/2024, arising out of case crime No.161/2024, under Sections 147, 323, 504, 506, 452, 308, 302 I.P.C. and Section 3(2)(V) of S.C./S.T. Act, Police Station Para, District Lucknow.

In the prosecution case it is alleged that on 25.03.2024 Sanjay Sharma, Vikas Sharma and Rahul Sharma along with 3-4 unknown persons with common intention break into the house of the informant and started hurling abuses and threatening to death. When the parent of the complainant resisted then the accused attacked his mother and father with *lathi* and *danda*. His father has suffered grievous injury in the head and both fell down after becoming unconscious which were admitted in the Trauma Centre KGMU with the aid of 108 ambulance.

Learned counsel for the appellant while pressing the appeal submits that, the appellant has been falsely implicated in this

case. Nothing as claimed by the prosecution has been committed by the appellant.

It is contended on behalf of the appellant that appellant is innocent. The prosecution case is doubtful. The occurrence has taken place on 25.03.2024 at about 08:00 am according to prosecution case and the statement of the complainant under Section 161 Cr.P.C. however, the F.I.R. has been lodged on 26.03.2024 at about 11:39 am after delay of one day although police station is hardly three kilometers away.

It is next submitted that no medico legal examination of the deceased and his injured wife has been conducted therefore, the nature of the injuries shown in the post mortem of the deceased cannot be ascertained as they are stitched wounds. No reason has been assigned by the State for not conducting the initial medico legal examination of the victim. He submits that in the charge-sheet there is no injury report of either deceased or his wife Rinky Devi. In the F.I.R. *lathi* and *danda* has been assigned to the accused along with the co-accused persons. No sharp edged weapon has been assigned however, the same informant, who lodged the F.I.R. after three days, has given an application to the police which is part of case diary and is on the record along with the supplementary affidavit dated 28.03.2024 wherein he has changed the prosecution story and introduced two more persons apart from the three mentioned in the F.I.R. and has alleged in his application dated 28.03.2024 that five named accused and 4-5 unnamed have committed the offence. He has further made improvement by assigning sharp edged weapon in their hand. It is thus, submitted that there is a stark contradiction in the prosecution story.

He further submits that it was a free fight ensued between the parties as a result of that two persons were injured from the

appellant's side. Medical examination report of Rahul Sharma and Vikas Sharma shows that they have received injuries. Injury on the head of the Vikas Sharma shows that he has received six stitched wounds on his head. Both injured from the accused-appellant side were brought by the police and in the medico legal examination of the injured Rahul Sharma, the duration of the injury is shown to 3-4 days old. The injured Rahul Sharma has been examined on 28.03.2024 thus, the opinion regarding injury No.1 shows that this injury was sustained on the date of the incident i.e. 25.03.2024. It is submitted that ten persons, five named and five unnamed, have been alleged to have caused one vital injury on the head of the deceased in the form of stitched wound which is cause of death. The other injuries are in the form of contusion and the third injury is on the abdomen. Cause of death is ante mortem head injury. It is not clear from the prosecution case that out of 9-10 accused persons who have been assigned the role of causing this injury. Appellant has no criminal history. He submits that father and two sons of one family have been falsely implicated.

It is lastly submitted that injured Rinky Devi has also denied the prosecution story stated by the complainant in his application dated 28.03.2024.

It is further submitted that, the appellant is languishing in jail in this matter since 28.03.2024. Charge-sheet in the matter has already been submitted. There is no likelihood that the appellant-applicant after release on bail may flee from the process of law or will misuse the liberty of bail granted by this Court.

Learned A.G.A. as well as learned counsel for the complainant have opposed the prayer for bail, but could not confront the factual submissions made by the learned counsel for the

appellant-applicant.

Considering the facts and circumstance of the case, stark contradiction in the F.I.R. as well as the statement of the complainant regarding the number of accused persons who have participated and also regarding the unnamed accused persons, fact that there is no injury report of the deceased or the injured in the charge-sheet, the improvement made by the complainant while giving application after three days of the incident so also the statement of the Rinky Devi coupled with the fact that appellant has no criminal history, period of incarceration gone into by the appellant and without commenting upon merits, I am of the view that the learned court below has failed to appreciate the material available on record. In view of above, the order passed by the court below is liable to be set aside.

Accordingly, the appeal is allowed and the order dated 29.06.2024 passed in Bail application No.4466/2024, arising out of case crime No.161/2024, under Sections 147, 323, 504, 506, 452, 308, 302 I.P.C. and Section 3(2)(V) of S.C./S.T. Act, Police Station Para, District Lucknow, is set aside.

Let the appellant-applicant ***Sanjay Sharma*** involved in aforesaid case be released on bail on furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) 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.

(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, without sufficient cause, 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 and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant 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.

The pending application, if any, too stands disposed of.

Order Date :- 19.12.2024
Saurabh Yadav/-

Digitally signed by :-
SAURABH YADAV
High Court of Judicature at Allahabad,
Lucknow Bench