

Neutral Citation No. - 2024:AHC-LKO:11134

Reserved on:- 12.01.2024

Pronounced on:- 07.02.2024

Court No. - 13

Case :- CRIMINAL APPEAL No. - 3108 of 2022

Appellant :- Rajesh Vajpayee

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

Counsel for Appellant :- Manoj Kumar Mishra, Anil Mishra, Jitendra Giri, Nagendra Mohan, Rishad Murtaza

Counsel for Respondent :- G.A., Amar Singh

Hon'ble Rajeev Singh, J.

1. Supplementary affidavit filed by learned counsel for the appellant is taken on record.
2. Heard Mr. Nagendra Mohan, learned counsel assisted by Mr. Anil Mishra, learned counsel for the appellant, Mr. Amar Singh, learned counsel for the private respondent, learned A.G.A. for the State and perused the record.
3. The present appeal has been filed for quashing the impugned judgement and order dated 15.11.2022 passed by learned Special Judge (SC/ST Act)/Additional District and Session Judge, Court No. 2, Unnao in Bail Application No. 3085 of 2022 arising out of Case Crime No. 528 of 2022 U/s 143, 147, 148, 149, 336, 326, 323, 308, 452, 504, 506, 406 I.P.C., Section 3(2)(5a) of SC/ST Act, Police Station- Kotwali, District- Unnao.
4. Submission of learned counsel for the appellant is that appellant has falsely been implicated in the present case, as he is prominent investigative journalist, several political persons of different political parties are inimical with him because appellant is bringing out the truth in

society. It has further been submitted that appellant was implicated in several false cases those are mentioned in paragraph no. 28 of the affidavit, but after fair investigation in relation to the said cases, appellant was exonerated.

5. Learned counsel for the appellant submitted that as per the prosecution case, it was alleged that on 26.02.2001, sum of Rs. 50,000/- was given by private respondent to his friend, namely, Gaurav Agnihotri, in lieu of same, Rs. 10,000/- was returned by Gaurav Agnihotri to him twice. It was further alleged that victim demanded the rest of amount from Gaurav Agnihotri then he scolded him by passing some words related to his caste and said that private respondent did not deserve to ask money, thereafter, some dispute took place between them. In furtherance of the said incident, it is further alleged that at the same time, appellant came to his roof and started passing some caste related words to victim by abusing him, in that regard, when objection was raised by victim, appellant opened fire by his licensee rifle but anyhow, victim saved himself. It is further alleged that appellant called his son, namely, Rahul Vajpayee as well as his nephews, namely Neeraj Vajpayee and Pankaj Vajpayee. After both the aforesaid persons came at the place of incident, they caught victim and started beating him by '*lathi*', '*danda*', iron road, brick and stone. It was further alleged that in order to save himself, victim ran away to his house, where he was again caught and beaten brutally by four persons. It was further alleged that when his pregnant wife came for rescuing him then accused persons beat her also. It was further alleged that anyhow, father of victim saved him, but in the meantime, appellant had given a blow with iron road due to which he received eye injury. After the aforesaid incident, victim got first aid and was referred to Hallet Hospital, Kanpur.

6. Learned counsel for the appellant further submitted that under strategical manner, one false F.I.R. No. 03 of 2024 U/s 504, 506 I.P.C., Sections 3(1)(da), 3(1)(dha) of SC/ST Act was lodged by Vishal Singh alias Ayush Gautam against Neeraj Vajpayee and Pankaj Vajpayee on

03.01.2024 with the averment that informant was getting life threat from the said persons.

7. Learned counsel for the appellant further submitted that recovery of iron road was shown from the possession of appellant but the same was not sent to F.S.L. for examination and only '*dandas*' were sent to F.S.L. for examination. It has further been submitted that appellant is in jail since 13.07.2022 and trial of case in question is not going on. It has further been submitted that all the aforesaid facts were not considered by learned trial court in the correct perspective while passing the impugned order, hence, the impugned order is liable to be set aside and appellant is entitled to be released on bail.

8. Learned A.G.A. as well as learned counsel for the private respondent vehemently opposed the prayer of appellant. They jointly submitted that victim categorically supported the prosecution version and the statement of the informant/victim was corroborated by injury reports.

9. Further submission of learned A.G.A. is that co-accused persons, namely, Neeraj Vajpayee and Pankaj Vajpayee has already been enlarged on bail and now they are giving life threat to victim, as a result, F.I.R. No. 03 of 2024 U/s 504, 506 I.P.C., Sections 3(1)(da), 3(1)(dha) of SC/ST Act was lodged by informant, namely, Vishal Singh alias Ayush Gautam against Neeraj Vajpayee and Pankaj Vajpayee on 03.01.2024 which is under investigation.

10. Further submission of learned counsel for the private respondent is that trial is not proceeding on the behest of co-accused persons and two discharge applications of co-accused persons are pending since long. He did not dispute the fact that appellant is in jail since 13.07.2022.

11. Considering the submissions of learned counsel for the appellant, learned counsel for the private respondent, learned A.G.A. and going through the contents of appeal, impugned order, supplementary affidavit, counter affidavit as well as other relevant documents; it is evident that

role of causing injury is assigned by iron rod but no such iron rod was sent to F.S.L. for examination. It is further evident that appellant is in jail since 13.07.2022, he is not at fault and trial of the case in question is also not going on. Therefore, this Court is of the view that the impugned order is liable to be set aside and appellant is entitled to be released on bail.

12. Resultantly, in view of the above facts and circumstances of the case and the fact that the trial of the case is not likely to be concluded in near future, hence, the appeal has substance and it is accordingly **allowed** and the impugned judgement and order dated 15.11.2022 passed by learned Special Judge (SC/ST Act)/Additional District and Session Judge, Court No. 2, Unnao is hereby **set aside**.

13. Let the appellant- **Rajesh Vajpayee** involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned, with the following conditions:-

(i) The appellant shall file an undertaking to the effect that he will 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.

(ii) The appellant shall remain present before the trial court on each date fixed, either personally or through their 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.

(iii) 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 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.

(iv) The appellant shall remain present, in person, before the trial court on the dates fixed for 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.

14. Trial court is directed to decide the trial of the case in question within one year.

15. District and Sessions Judge, Unnao is also directed to ensure that the order be complied with.

16. Office is directed to communicate this order to the trial court and District and Sessions Judge, Unnao, forthwith.

Order Date :- 07 February, 2024

Arpan