

Court No. - 16

Case :- CRIMINAL APPEAL No. - 3752 of 2024

Appellant :- Dhirendra Yadav

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

Counsel for Appellant :- Neeraj Singh

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

As per the office report, appellant has not taken steps for service on respondent No.2 however, learned A.G.A. on the basis of instructions submits that notice to the informant has been served.

None appears for the informant.

Heard learned counsel for the appellant, learned A.G.A. appearing for the State and 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 11.11.2024 passed in Bail application No.3175/2024, arising out of case crime No.204/2024, under Sections 126(2), 115(2), 352, 351(3), 105 of BNS and Section 3(2)(v) of S.C./S.T. Act, Police Station Safipur, District Unnao.

In the prosecution case it is alleged that on 29.07.2024 at about 04:00 pm when the respondent No.2 and her husband was returning to their home after sowing paddy in the agricultural field of one Rishi, then it the way the accused persons met them and they forced them to sow paddy in their agricultural filed. When the husband of the respondent No.2 refused to do so then the accused persons started assaulting them by *lathies*. When the respondent no. 2 tried to rescue her husband then she was also assaulted by the accused persons. Due to the assault, the husband of the respondent No.2 received head injury.

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 general role of

assault has been levelled in the F.I.R. against three accused persons. While filing charge-sheet name of Shailendra has been dropped by the Investigating Officer. He submits that deceased suffered four ante mortem injuries out of which only one injury in the form of contuse swelling size 11 cm X 4 cm present on occipital region, the other three injuries are on non-vital part. Cause of death is coma due to ante mortem head injury.

He submits that role of causing this head injury is assigned to the co-accused Raj Kumar and not to the present appellant. Role of the appellant is distinguished from the co-accused Raj Kumar. The name of third accused has already been dropped.

It is further submitted that appellant has also suffered grievous injury on his head and has suffered linear fracture, copy of the treatment and discharge slip of Neurosurgery department of G.S.V.M. Medical College, Kanpur has been filed which shows that appellant was admitted w.e.f. 29.07.2024 to 07.08.2024. It is submitted that appellant is not responsible for the head injury cause to the deceased.

It is further submitted that, the appellant is languishing in jail in this matter since 07.08.2024. 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. opposes the prayer for bail however, could not show as to anywhere the head injury suffered by the accused has been explained in the prosecution case.

Considering the facts and circumstance of the case, general allegation levelled on the accused, specific role of causing single head injury is on co-accused Raj Kumar, cause of death is ante mortem head injury so also the fact that injury suffered by the accused appellant has not been explained in the prosecution case hence in view of law laid down by Hon'ble Supreme Court in the case of ***Laxmi Singh vs. State of Bihar reported in AIR 1976 SC 2263***, period of incarceration gone into by the appellant and the fact that appellant has no criminal history and the role of the appellant is distinguishable from the co-accused Raj Kumar 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 11.11.2024 passed in Bail application No.3175/2024,

arising out of case crime No.204/2024, under Sections 126(2), 115(2), 352, 351(3), 105 of BNS and Section 3(2)(v) of S.C./S.T. Act, Police Station Safipur, District Unnao, is set aside.

Let the appellant-applicant **Dhirendra Yadav** 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 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.

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

Order Date :- 20.12.2024

Saurabh Yadav/-