

Court No. - 68

Case :- CRIMINAL APPEAL No. - 5292 of 2022

Appellant :- Satya Narayan And 4 Others

Respondent :- State of U.P.

Counsel for Appellant :- Rajrshi Gupta, Kamlesh Shrama

Counsel for Respondent :- G.A., Bal Krishna Yadav, Harendra Yadav, Sanjay Kumar Yadav

Hon'ble Ali Zamin, J.

Order on Appeal

Heard Sri Rajrshi Gupta learned counsel for the appellants.

Learned counsel for the appellants submits that this appeal has been preferred against the judgement and order dated 22.07.2022 passed by Ist Additional Session Judge, Ghazipur in Session Trial No.46 of 2012 (State vs. Rajendra Ram & others), arising out of Case Crime No.56/2011, P.S. Dullahpur, District Ghazipur, convicting the appellants under Sections 304/149, 323/149, 504, 506 I.P.C., awarding the maximum sentence of 10 years imprisonment.

List in due course.

Order on Bail Application under Section 389 (1) Cr.P.C.

Heard learned counsel for the applicants-appellants, learned AGA for the State as well as learned counsel for the informant and perused the record.

Learned counsel for the applicants-appellants submits that according to prosecution version appellants, Indrajeet @ Tuntun assaulted the deceased by lathi danda in which Ram Janam died, Hari Ram and Sanjeev received injuries. Admittedly, informant Pintu is not eye witness, witness of the incident is Sanichari, who has not stated with regard to involvement of the appellants. During investigation, involvements of the appellants was not found and they were exonerated, on application under Section 319 Cr.P.C., they were summoned and after trial they have been convicted. He further submits that incident occurred in the morning at 10:00 a.m., Hari Ram and Sanjeev have medically examined on the same day at 8:10 p.m. and 8:20 p.m. and injuries were found fresh which is not possible in case the incident occurred at 10:00 a.m., thus, evidence with regard to medical report of the injured does not supported the incident. They have been falsely implicated in the case. As per statement

of the Sanichari also it is Indrajeet, who caused the fatal blow to the deceased and as per statement of the injured itself he was not an eye witness of the incident. Learned trial court without proper appreciation of the prosecution case has wrongly convicted the appellants. Hearing of the appeal will take time due to heavy pendency, therefore, they should be enlarged on bail. He submits that the appellants undertake that they will not misuse the liberty of bail and shall remain present before the Court as and when required and they will cooperate with the hearing of appeal.

Learned A.G.A. as well as learned counsel for the informant opposed and submits that prompt F.I.R. has been lodged naming the appellants, there is no reason to falsely implicate them. Incident was caused by the appellants and co-accused injured witness Sanjeev and eye witness Sanichari has supported the prosecution case, they have been rightly convicted, therefore, they are not entitled for bail.

Considering the unlikelihood of early hearing of appeal due to heavy pendency, occurring of the incident at 10:00 a.m. and as per medical report injuries found to injured Hari Ram and Sanjeev fresh, who were examined at 8:10 p.m. to 8:20 p.m. respectively as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for grant of bail during pendency of the appeal.

Let the applicants-appellants **Satya Narayan, Dinesh, Rajesh, Shyam Sunder** and **Keshav** be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of trial Judge concerned in Special Sessions Trial No.46 of 2012 (State vs. Rajendra Ram & others), arising out of Case Crime No.56/2011, under Sections 304/149, 323/149, 504, 506 I.P.C., P.S. Dullahpur, District Ghazipur and applicants-appellants will cooperate with the hearing of the appeal.

Half of the amount of fine shall remain stayed till the disposal of the appeal.

As soon as personal bonds and surety bonds are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by trial Judge concerned to be kept on the record of this appeal.

Order Date :- 14.11.2022
Jitendra