

Court No. - 86

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Case :- CRIMINAL APPEAL No. - 3668 of 2021

Appellant :- Hasratulla Shervani And 8 Others

Respondent :- State of U.P.

Counsel for Appellant :- Renu Singh, Sr. Advocate

Counsel for Respondent :- G.A.

Hon'ble Mohd. Aslam, J.

Order on Criminal Misc. Bail Application No.1 of 2021

Heard Sri V.P. Srivastava, learned Senior Counsel assisted by Sri Rajiv Nayan Singh, learned counsel for accused-appellants, Sri Om Prakash, learned A.G.A. for the State and perused the record.

This application has been preferred under Section 389(1) Cr.P.C. seeking suspension of sentence and release of appellants on bail during pendency of appeal filed against impugned judgment and order dated 25.8.2021 passed by Additional District & Sessions Judge, Court No.3, Kasganj in S.T. No.311 of 2019 (State Vs. Hasratulla Shervani and others), arising out of Case Crime No.408 of 2012, under Sections 147, 148, 149, 307, 452, 323, 504, 506, 332, 353 I.P.C., P.S.- Dholana, District- Kasganj, convicting the accused-appellants Hasratulla Shervani, Vazahat Shervani @ Majhale, Shameem, Yusuf, Dilshad, Habeeb, Samaruddin, Kamar and Samar under Sections 147, 148, 307/149, 323, 452, 504, 506, 332, 353 I.P.C. and sentencing them to undergo rigorous imprisonment for two years with a fine of Rs.1000/- each under Section 147 I.P.C. in default undergo imprisonment for one month; to undergo rigorous imprisonment for two years with a fine of Rs.1000/- each under Section 148 I.P.C. in default undergo one month imprisonment; to undergo rigorous imprisonment for seven years with a fine of Rs.5000/- each under Section 307 read with Section 149 I.P.C. in default undergo six months imprisonment; to undergo rigorous imprisonment for one year with a fine of Rs.1000/- each under Section 323 I.P.C. in default undergo one month imprisonment; to undergo rigorous imprisonment for five years with a fine of Rs.1000/- each under Section 452 I.P.C. in default undergo one month imprisonment; to undergo rigorous imprisonment for one year with a fine of Rs.1000/- each under Section 504 I.P.C. in default undergo one month imprisonment; to undergo rigorous imprisonment for two years with a fine of Rs.1000/- each under Section 506 I.P.C. in default undergo imprisonment for one month; to undergo rigorous imprisonment for two years with a fine of Rs.1000/- each under

Section 332 I.P.C. in default undergo imprisonment for one month; to undergo rigorous imprisonment for two years with a fine of Rs.1000/- each under Section 353 I.P.C. in default imprisonment for one month.

The prosecution story in brief is that informant Shamsad has lodged a first information report on 14.9.2012 at 11:45 p.m. at Police Station- Dholana, District- Kasganj on the basis of written complaint that on 20.5.2011 a false report was lodged against informant by Shameem on account of which police has arrested the informant and lodged in the lock up. On 30.8.2012 at about 02:00 p.m. accused-appellant Hasratulla Shervani (MLA) along with his Bhanja Vazahat Shervani @ Majhale, Ashraf, Shameem, Yusuf, Dilshad, Habeeb, Shakruddin, Kamar and Samar residents of Garhi along with 50 supporters came to the police station and accused-appellant Hasratulla Shervani asked from the gate of police station about informant Shamsad and has instructed the police to beat him so badly so that he will become crippled by foot and hand, otherwise they will ready for the bad consequences. After that the accused-appellant Hasratulla Shervani along with his supporters proceeded towards the police lock-up and at that time the accused-appellant Hasratulla Shervani was armed with riffle and gun and supporters were armed with danda and caught hold his hand in the lock-up from outside and assaulted upon him with intention to kill him by butt of rifle and other guns, lathi and danda. The S.O. Ram Murti Yadav intervened and anyhow he saved him. It was also stated that the injury on his body was grievous and he requested for his medical examination and action against accused-appellants and further stated that accused-appellant Hasratulla Shervani and his supporters had abused him.

It is contended by learned counsel for accused-appellants that in this case, the informant has turned hostile and other eye witnesses have also turned hostile and only two police personnel Rtd. S.I. Phool Singh (PW-1) and H.Ct. Chhote Lal (PW-2) has supported the prosecution. It is further contended that the injuries found on the body of the informant was of simple nature. It is further contended that the accused-appellant was not arrested at the police station. It is further contended that the appeal is likely to take some time for its disposal, therefore, they may be released on bail during pendency of appeal.

Learned A.G.A. for the State has opposed the bail application and has submitted that it is the case that accused Hasratulla Shervani was elected member of the Legislative Assembly has crossed all the limits and has beaten the informant at the lock-up of police station by calling him near and, pulling his hand

out side lock-up and has also obstructed the police in performing their official duties. It is further contended that S.I. Phool Singh, the then Station Officer had anyhow saved the informant. It is further contended that due to the influence of the accused-appellant Hasratulla Shervani all the witnesses of the fact except police personnel have turned hostile. It is further contended that in such a matter accused-appellants are not entitled for bail during pendency of appeal. Learned A.G.A. for the State has also pointed out that the case, which is decided by the Special Court pertaining to MP/MLA are dealt by Special Bench of this High Court, whereas against the judgment of Additional Sessions Judge shall be heard by any Bench of this Court.

I have gone through the file and has given thoughtful consideration on the contention raised by learned counsel for the parties and have also perused the injury report of the injured Shamsad, who has turned hostile during his examination. The injured Shamsad was medically examined on 23.5.2011 at 12:55 at C.H.C., Kasganj and the following injuries were found at the time of medical examination:-

- 1. abrasion 5 c.m. x 3 c.m. in front of upper part at right side of the chest above right nipple.*
- 2. contusion swelling 12 c.m. x 8 c.m. on the upper part of right palm,*
- 3. contusion 12 c.m. x 2.5 c.m. on right thigh in front of middle and outer aspect, 15 c.m. above the right knee joint*
- 4. Abrasion 1.5 c.m. x 2 c.m. on right knee joint with traumatic swelling in area of 3.5. c.m. x 2 c.m.*

From perusal of the injury report, it prima facie supports the contents of first information report, therefore, in above circumstances and that the injured has turned hostile is of no consequence. In this case it appears that on influence of accused-appellant Hasratulla Shervani, the witnesses have turned hostile. It was his duty to raise the issue of misuse of law in Assembly and get it remedied but instead of it he himself misused the law and took law in his hand and pressurized the police personnel to adopt third degree and get him lodged in police lock up, this act of the accused amounts to misuse of police machinery, therefore, his act deserves no sympathy instead of condemnation. Now a days, the legislatures and political persons are thinking themselves as above the law. This menace cannot be lightly taken and should be dealt with iron hand. So far as the bail related to the accused-appellant

Hasratulla Shervani is concerned, his bail application is rejected.

So far as the rest accused-appellants Vazahat Shervani @ Majhale, Shameem, Yusuf, Dilshad, Habeeb, Samaruddin, Kamar and Samar are concerned, their bail application is allowed because they have followed him.

Let the appellants **Vazahat Shervani @ Majhale, Shameem, Yusuf, Dilshad, Habeeb, Samaruddin, Kamar** and **Samar** be released on bail on their furnishing personal bonds and two sureties each in the like amount to the satisfaction of court concerned in S.T. No.311 of 2019 (State Vs. Hasratulla and others), arising out of Case Crime No.408 of 2012, under Sections 147, 148, 149, 307, 452, 323, 504, 506, 332, 353 I.P.C., P.S.- Dholana, District- Kasganj and on furnishing undertaking that they will co-operate with the hearing of appeal and remain present on each and every date in person or through counsel. The sentence awarded to the accused-appellants Vazahat Shervani @ Majhale, Shameem, Yusuf, Dilshad, Habeeb, Samaruddin, Kamar and Samar shall remain suspended during pendency of appeal.

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

The party shall file computer generated copy of order downloaded from the official website of High Court Allahabad, self attested by it along with a self attested identity proof of the said person(s) (preferably Aadhar Card) mentioning the mobile number(s) to which the said Aadhar Card is linked, before the concerned Court/Authority/Official.

The concerned Court/Authority/Official shall verify the authenticity of the computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order on memo of Appeal

List in the week commencing 10.1.2022 for final hearing of appeal.

Order Date :- 12.11.2021

Anil K. Sharma