

## Neeraj Saini vs State Of U.P. And Another on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:72921

Court No. - 80

Case :- CRIMINAL APPEAL No. - 2048 of 2025

Appellant :- Neeraj Saini

Respondent :- State of U.P. and Another

Counsel for Appellant :- Arvind Kumar Srivastava, Shailesh Kumar Srivastava

Counsel for Respondent :- G.A., Praveen Kumar

Hon'ble Nalin Kumar Srivastava, J.

1. This criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant - Neeraj Saini with the prayer to allow the appeal, set aside the bail rejection order dated 7.2.2025 passed by Special Judge (SC/ST Act), Bijnor in Crl. Misc. Bail Application No.201 of 2025 (Neeraj Saini Vs. State of U.P.) and release the appellant on bail in Case Crime No.564 of 2024 under Sections 103(1), 3(5), 191(2), 190, 126(2), 61(2) B.N.S., Section 3(2) S.C./S.T. Act and Section 35 Arms Act, Police Station Dhampur, District Bijnor.

2. Heard learned counsel for the appellants, learned A.G.A. for the State as well as learned counsel for the respondent no.2 and perused the entire record.

3. The prosecution has come forward with a case that the deceased, Neeraj Kumar, the son of the informant Prakash Devi, who was a member of the SC/ST community, had some altercation with Anmol @ Sam and he was called by Kuldeep and also on mobile by the present appellant to settle the dispute and when the deceased reached there, the accused persons namely, Neeraj Saini (the

present appellant), Ujjwal, Krishna, Vishal, Akash, Vinay and Hannan were present near St. Marry School and the deceased was beaten by them and his murder was committed by firearm injury in the night of 16.12.2024 at about 8:25 P.M. The informant was informed about the incident by Lucky Kumar, Gaurav, Anmol and Aryan, who were known to the deceased. F.I.R. was lodged and investigation started, which is pending.

4. It is submitted by the learned counsel for the appellant that the appellant is innocent and has been falsely implicated in this case. He has not committed the present offence. Alleged offences are not attracted against him. Essential ingredients to constitute an offence under the S.C./S.T. Act are lacking in this matter, therefore no case under the S.C./S.T. Act is made out against the appellant. It is also submitted that in the postmortem report of the deceased, the cause of death has been found ante-mortem firearm injury causing shock and hemorrhage to the deceased. It is also submitted that in the F.I.R. it has been mentioned that all the accused persons present over there made an assault upon the deceased but however no such injury has been found on the body of the deceased and the perusal of the postmortem report reveals that he has received only one firearm entry wound. It is also submitted that only a general role has been assigned to the present appellant and as a matter of fact, the fire which caused death of the deceased was made by co-accused Ujjwal and the murder weapon country made pistol was retrieved by the police on the pointing out of co-accused Ujjwal and the present appellant had nothing to do with this recovery. It is also submitted that there are material contradictions in the statement of the witnesses when they were interrogated by the I.O. and the F.I.R. of this case. The prosecution case is not certain on the point that how many accused persons participated in the commission of the crime. It is also submitted that for some old enmity with the deceased, the co-accused Ujjwal had a motive to do away with him. It is also submitted that the present appellant had absolutely no motive to commit the murder of the deceased and no incriminating article has been retrieved from his possession or pointing out. It is also submitted that no role of firing has been assigned to the present appellant by any of the eyewitnesses of this case. It is also submitted that the incident has been corroborated by the eyewitness Lucky Kumar, which is unfolded in the F.I.R., and he also does not assign role of firing to the present appellant. It is further submitted that the Court concerned while passing the impugned order did not take into account the facts and evidence available on record in right perspective and erred in passing the same. It is further submitted that the appellant is languishing in jail since 19.12.2024 having no criminal antecedents to his credit. It is lastly submitted that the impugned order rejecting the bail application of the appellant suffers from infirmity and illegality warranting interference by this Court.

5. On the other hand, learned A.G.A. as well as learned counsel for the respondent no.2 opposed the appeal and it has been submitted that the appellant committed the present offence having knowledge that the deceased belonged to S.C./S.T. community. There is no infirmity or illegality in the impugned order. It is further submitted that although the evidence on record speaks about the role of firing upon the deceased to co-accused Ujjwal but since all the accused persons came on spot with an intention to cause murder of the deceased and in furtherance of common intention of all, fire was made by co-accused Ujjwal but the present appellant is also liable for that act and that is why Section 3(5) B.N.S. has been added in this matter.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

7. In the facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment and also keeping in view the role of the present appellant in the commission of crime, who has not been assigned the actual role of firing, no injury except the one gunshot injury was found on the body of the deceased in the autopsy report whereas as per F.I.R., firstly he was beaten by several accused persons and subsequently he was shot dead, no criminal antecedents to the credit of the appellant was brought to the notice of this Court, the incarceration period, the statement of some other eyewitnesses, the Court is of the opinion that the appellant has made out a case for bail. The Court concerned erred in rejecting the bail application of the appellant. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

8. Accordingly, the appeal is allowed and the impugned order rejecting the bail application of the appellant is set-aside.

9. Let the appellant Neeraj Saini involved in Case Crime No.564 of 2024 under Sections 103(1), 3(5), 191(2), 190, 126(2), 61(2) B.N.S., Section 3(2)5 S.C./S.T. Act and Section 35 Arms Act, Police Station Dhampur, District Bijnor be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(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 will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) 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.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 1.5.2025 ss