

**Court No. - 85**

**Case :-** CRIMINAL APPEAL No. - 8388 of 2023

**Appellant :-** Kamalkant Shukla @ Pappu

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Appellant :-** Arun Kumar Singh

**Counsel for Respondent :-** G.A.

**Hon'ble Mayank Kumar Jain,J.**

List has been revised. Despite service of notice upon the opposite party no.2, no one appears on his behalf.

Heard learned counsel for the appellant, learned AGA for opposite party no.1 and perused the material placed on record.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to set aside the impugned order dated 04.07.2023 whereby the Special Judge, SC/ST Act, Kanpur Dehat has rejected the anticipatory bail application of the appellant moved by him in Case Crime No. 61 of 2021, under Sections 323, 504, 354 of IPC, Section 3(2)V of SC/ST Act and Section 7/8 of POCSO Act, Police Station Shivrajpur, District Kanpur Nagar.

The first information report of the case is lodged on the basis of an application moved by the informant under Section 156(3) Cr.P.C. under the order of competent court. The facts mentioned in the first information report relating to some incident of 2015, 2020 thereafter the latest incident of 31.10.2021 in which at around 7.00 am appellant and co-accused entered in the house of the informant and addressed with caste related words and threatened her and disrobed the minor daughter of the informant. The informant and her children were beaten with a wooden stick by the appellant and other persons in which the informant and her children sustained injuries.

Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that appellant is patient of cancer since 2021 and he is under treatment with competent Doctor in Regency Hospital, Kanpur Nagar. In the FIR itself it is mentioned by the informant that there was a dispute of wall between the parties. No medical

examination was conducted either of the informant or her children, therefore, the incident does not corroborate with any medical report. It is also submitted that the statements of son of the informant Ritesh and the victim's daughter were recorded under Section 164 Cr.P.C. in which they stated that their mother (informant) was not present at the time of incident. This statement is contradictory to the averment made in the FIR. It is also submitted that there are material contradiction in the statement of informant and contents of FIR and the statement of her children. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. It has been stated that appellant is having apprehension of imminent arrest and that appellant has no criminal history to his credit. The age of the appellant is around 50 years and in case, he is granted anticipatory bail, he shall not misuse the liberty of bail and will cooperate with the investigation.

Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of anticipatory bail to the appellant but could not dispute the fact that the appellant is a cancer patient and no medical evidence is available on record to corroborate the version of the FIR and contradiction in the statements of prosecutrix and her children.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has not properly considered the case of the appellant. Hence, in view of above consideration, the order of rejection of anticipatory bail passed by the trial court dated 04.07.2023 is, hereby, set aside.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant and without expressing any opinion on the merits of the case, the appellant is entitled to be released on anticipatory bail in this case for the limited period considering the exception considered by the Hon'ble Supreme Court in the case of ***Sushila Aggarwal Vs. State (NCT of Delhi) 2020 SCC Online SC 98.***

In the even of arrest of the appellant **Kamalkant Shukla @ Pappu**, shall be released on anticipatory bail **till the conclusion of trial** in the aforesaid case crime number on his furnishing a personal bond and two local sureties each in the like amount to the satisfaction of the court concerned/Station House Officer of the police station concerned subject to the following conditions:

(i) 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.

(ii) The appellant shall not pressurize/intimidate the prosecution witnesses.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

(iv) The appellant shall make himself available for interrogation by a police officer as and when required.

In default of any of the conditions, the Investigating Officer/prosecution shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

The criminal appeal is allowed.

**Order Date :- 13.10.2023**

Mohit