

Court No. - 85

Case :- CRIMINAL APPEAL No. - 8666 of 2023

Appellant :- Rajeev Mishra

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ashok Kumar Chaubey

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

Hon'ble Mayank Kumar Jain,J.

Short counter affidavit filed on behalf of opposite party no.2 is taken on record.

Heard learned counsel for the appellant, Sri Narendra Kumar, learned counsel for the informant as well as learned Additional Government Advocate for the State of U.P. and perused the record. This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant with the prayer to set aside the bail rejection order dated 27.07.2023 passed by learned Special Judge SC/ST (P.A.) Act, Moradabad in Bail Application No. 3104 of 2023 , arising out of Case Crime No. 143 of 2023, under Sections 420, 406, 467, 468, 471, 504, 506 IPC and 3 (1) (da), 3 (1) (dha), 3 (2) (va) of SC/ST (P.A.) Act, Police Station Majhola, District Moradabad.

There is allegation in the F.I.R. that co-accused Waseem told the informant that he was having close relation with the appellant. Appellant promised the informant to provide a job. The named accused Waseem and Sareef took Rs. 10 lakh from Sarvesh, Vikas and informant on 06.07.2020 before Suesh and Vijay. Informant was called at Lucknow on 09.7.2020 and Rs. 5 lakh were taken by the appellant in cash from all the three aforesaid persons. Total Rs. 22,35,000/- has been taken by the appellant. Rs. 6,35,000/- from the informant, Rs. 10 lakh from Sarvesh and Rs. 6 lakh from Vikas has been taken by the appellant. A forged appointment letter was posted on Internet. The appellant alongwith other co-accused userup the money from informant and other persons. On 20.10.2022 when informant alongwith Vikas went to the appellant and asked their money, they were addressed with their caste related words and threatened by the appellant.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. It is

further submitted that as per version of F.I.R. Rs. 10 lakh has been given to the other co-accused Waseem and Mohd. Sareef. There is no evidence that informant has given Rs. 5 lakh in cash to the informant. So far as criminal history of appellant is concerned, in two cases appellant has been granted bail and in one other case he has been granted protection by this Court. It is further submitted that there is no documentary evidence against the appellant that he ever prepared or posted any forged appointment letter on the internet and had called the informant to Lucknow for their medical examination. Therefore, no offence under Section 467 I.P.C. is made out against the appellant. It is also submitted that the maximum punishment in other offences is upto seven years. It is further submitted that no offence under SC/ST Act is made out against the appellant as there is no public view that appellant addressed the informant with caste related words. Lastly, it is submitted by learned counsel for the appellant that there is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant is languishing in jail since 09.07.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the early disposal of the case.

Per contra, learned A.G.A. assisted by learned counsel for the informant opposed the prayer for bail contending that appellant has committed forgery with the informant and other persons and had taken huge money from them on the pretext of false promise to provide them job.

Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, this Court is of the view that the appellant has made out a case for bail. The Court below erred in rejecting the bail application. 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.

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

Let the appellant, namely, **Rajeev Mishra** involved in the above Case 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.

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 :- 7.11.2023

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