

Court No. - 85

Case :- CRIMINAL APPEAL No. - 8702 of 2023

Appellant :- Vashishth Kumar Tiwari @ Rajoo Pandi And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Mahabir Yadav, Ajay Kumar Pandey

Counsel for Respondent :- G.A., Ravi Prakash Srivastava

Hon'ble Mayank Kumar Jain, J.

1. Counter affidavit filed today by learned counsel for the informant is taken on record.

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

3. The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellants to set aside the order dated 20.07.2023 passed by Special Judge, Sonbhadra by which the Anticipatory Bail Application No. 1695 of 2023 (Vashishth Kumar Tiwari and others Vs. State), filed in complaint case no. 4094 of 2021 (Gulabi Vs. Rajeshwari Tiwari), under Sections 463, 464, 468 of IPC, and under Section 3(1)(4) of SC/ST Act, has been rejected and further be pleased to release the applicant on bail in the aforesaid complaint case, Police Station Ghorawal, District Sonbhadra.

4. A complaint was filed against the appellant in the year 2003 that on 05.11.2023 the appellants threatened the complainant and claimed that the agricultural land belonged to them. On making enquiry the complainant came to know that appellants had committed forgery and by showing the complainant as dead person got their name mutated in the revenue records. Against which relevant proceedings have been filed.

5. Learned counsel for the appellants submits that appellants are innocent and have been falsely implicated in this case. The proceedings were challenged before this Court and vide order dated 17.08.2004, the proceedings of the complaint were stayed. The name of the appellants were mutated in the revenue records. In the proceedings under Section 34 C.R Act for restoration, the

statement of the witnesses were recorded and the appeal was also disposed of on the basis of compromise. Its restoration was also dismissed. The application under Section 482 Cr.P.C was dismissed by this Court on 12.05.2022. The appellants are summoned through process in the year 2022. The matter is of civil nature, no criminal liability is involved in this matter. It is submitted that offence under section of 463, 464, 468 I.P.C is not made out. It has been stated that appellants are having apprehension of imminent arrest and that appellants have no criminal history to his credit and that in case, he is granted anticipatory bail, he shall not misuse the liberty of bail and will cooperate with the Investigation.

6. Per contra, learned A.G.A. assisted by the learned counsel for the informant have vehemently opposed the prayer for grant of anticipatory bail to the appellants and submitted that from the Board of Revenue to the year 2009 proceedings are culminated against the appellant but no record about this is filed by him.

7. In this matter the complainant had also died and Kalawati @ Kamlawati claims to be her legal representative through will executed by Gulabi, prima-facie, it appears that matter is of civil nature.

8. 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 appellants. Hence, in view of above consideration, the order of rejection of anticipatory bail passed by the trial court is, hereby, set aside.

9. 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.

10. In the even of arrest of the appellants-**Vashishth Kumar Tiwari @ Rajoo Pandit, Kamlesh Tiwari and Lavkush Tiwari**, shall be released on anticipatory bail till the conclusion of trial on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the Station House Officer of the police station concerned subject to the following conditions:

(i) The appellants 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 appellants shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellants 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.

11. In case of breach of any of the above conditions, the prosecution shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the appellants.

12. The criminal appeal is allowed.

Order Date :- 6.12.2023

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