

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10079 of 2023

Appellant :- Noor Hasan And 2 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Vinod Singh

Counsel for Respondent :- G.A.,Rajesh Kumar Mishra

Hon'ble Mayank Kumar Jain,J.

Heard learned counsel for the appellants, learned AGA for opposite party no.1 and learned counsel for the informant 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 appellants to set aside the impugned order dated 19.08.2023 whereby the Special Judge, SC/ST Act, Rampur has rejected the anticipatory bail application of the appellants moved by them in Special Case No.61 of 2023, under Sections 323, 506, 354 of IPC, and Section 3(1)Da, 3(1)Ba (i) of SC/ST Act, Police Station Swar, District Rampur.

There is allegation in the FIR that on 09.9.2021 at around 10.00 am the appellants misbehaved with the informant and tried to caught her to commit indecent activities with her. She was beaten up by the appellants. The appellant addressed caste related abuses to the informant.

Learned counsel for the appellants has submitted that appellants are innocent and have been falsely implicated in this case. It is submitted that after investigation no charge sheet came to be filed against the appellants since it was concluded by the Investigating Officer that the husband of the informant namely Mukesh Kumar was recommended for allotment of house in the scheme of Pradhanmantri Awas Yojna but since Mukesh Kumar was found to be owner of an agricultural land as well as a house therefore, a resolution was passed on 27.05.2021 in which his name was struck off from the list of recommendation. On the pretext of this incident, the FIR was lodged by the informant.

It is further submitted that a protest petition came to be filed on behalf of informant which was considered and disposed off by the

court concerned vide its order dated 23.03.2023 and it was concluded that there was no material on record to take cognizance against the appellants. However, the protest petition was registered as complaint case. Thereafter the statement of informant was recorded under Section 200 Cr.P.C. and the statement of husband of the informant was also recorded under Section 202 Cr.P.C.

It is further submitted that criminal history of appellants are duly explained in para 33 of affidavit annexed with this application in which in all matters final reports have been submitted. In another case which is explained in para 2 of supplementary affidavit, the proceedings were quashed by this Court after hearing of the parties. It is also submitted that during the alleged incident some persons shot video in which it was found that no such incident was taken place. 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 in case, they are granted anticipatory bail, they shall not misuse the liberty of bail and will cooperate with the investigation.

Per contra, learned A.G.A. assisted by learned counsel for the informant has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of anticipatory bail to the appellant and argued that medical examination of the informant was conducted on 11.09.2021 in which three injuries were noted. The medical examination was conducted during investigation. The appellants are habitual offender and they have criminal history of six cases to their credit.

In rebuttal, it is submitted that the incident is said to have taken place on 09.09.2021 while medical examination was conducted on 11.09.2021 in which injuries are noted to be fresh in nature.

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 dated 19.08.2023 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 appellants and without expressing any opinion on the merits of the case, the appellants are 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 appellants **Noor Hasan, Nijamuddin @ Bhola, Ameerul Hasan @ Ameer Hasan** shall be released on anticipatory bail **till the conclusion of trial** in the aforesaid case on their furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court 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 applicants shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by them before the S.S.P./S.P. concerned.

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

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

The criminal appeal is allowed.

Order Date :- 22.11.2023

Mohit