

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9719 of 2023

Appellant :- Deepak Mishra

Respondent :- State of U.P. and Another

Counsel for Appellant :- R.K. Shahi

Counsel for Respondent :- G.A., Ganesh Shanker Srivastava, Sonu Nirmal

With

Case :- CRIMINAL APPEAL No. - 9744 of 2023

Appellant :- Ram Milan Mishara

Respondent :- State of U.P. and Another

Counsel for Appellant :- Janardan

Counsel for Respondent :- G.A., Ganesh Shanker Srivastava, Sonu Nirmal

Hon'ble Mayank Kumar Jain, J.

Counter affidavits filed on behalf informant in both the appeals are taken on record.

Since both the aforesaid appeals arise out of same case crime number, therefore are being heard and decided together.

Heard learned counsel for the appellants, Sri Ravi Shankar Kanojiya holding brief of Sri Sonu Nirmal, learned counsel for the opposite party no.2/informant, learned Additional Government Advocate for the State of U.P. and perused the record.

These criminal appeals under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act have been preferred by the appellants namely Deepak Mishra and Ram Milan Mishara with the prayer to set aside the bail rejection orders dated 23.08.2023 passed by learned Special Judge (SC/ST) Act, Deoria in Bail Application No. 1737 of 2023 arising out of Case Crime No. 100 of 2018, under Sections 302, 201, 120-B of IPC and Section 3 (2) v of SC/ST Act, Police Station Madanpur, District Deoria and in Bail Application No. 1736 of 2023 arising out of Case Crime No. 100 of 2018, under Sections 302, 201, 120-B of IPC and Sections 3 (1) r and 3 (2) v of SC/ST Act, Police Station Madanpur, District Deoria respectively.

Learned counsel for the appellants argued that the appellants are innocent and they have been falsely implicated in this case. It is further submitted that both the appellants were named in the F.I.R. but after investigation final report was submitted against them. No charge sheet came to be filed against them. Charge sheet have been filed against co-accused Bullu, Sheesham Madesiya, Sonu Thatera and Kanhaiya Yadav. It is further submitted that co-accused namely Sonu Thatera, Kanhaiya Yadav and Smt. Sheesham Madesiya against whom charge sheet has been submitted have already been granted bail by this Court vide orders dated 27.02.2029, 21.01.2019 and 13.09.2018 passed in Criminal Appeal Nos. 6628 of 2018, 4798 of 2018 and 4496 of 2018 respectively. It is further submitted that during trial statement of PW1 Bholoo Kanojiya was recorded and on the basis of which the appellants were summoned to face trial under Section 319 Cr.P.C. Case of the prosecution rests upon circumstantial evidence but no chain of event is connected with each other which can indicate that appellants are the author of the crime. The appellants have no previous criminal history and they are languishing in jail since 18.08.2023 in case they are released on bail, they 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 aforesaid prayer. However, they could not dispute the aforesaid factual aspects of the matter.

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 appellants have made out a case for bail. The Court below erred in rejecting the bail applications. The impugned orders suffers from infirmity and illegality and the same are liable to be set-aside and the appeals are liable to be allowed.

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

Let the appellants, namely, **Deepak Mishra** and **Ram Milan 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 appellants will not tamper with the evidence during the trial.

(ii) The appellants will not pressurize/intimidate the prosecution witness.

(iii) The appellants will appear before the trial court on the date fixed, unless personal presence are exempted.

(iv) The appellants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

(v) 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.

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 :- 9.11.2023

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