

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9821 of 2023

Appellant :- Bhoopram And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Upendra Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

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

At the very outset, learned A.G.A. submits that service of notice upon opposite party No.2 is sufficient.

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 17.08.2023 whereby the Special Judge, SC/ST Act, Pilibhit has rejected the anticipatory bail application of the appellant moved by him in Case Crime No. 90 of 2018, under Sections 307, 379 I.P.C. and Section 4/21 of Mining Act, Police Station- Barkheda, District- Pilibhit.

Learned counsel for the appellants submits that in the same case crime number appellants, Bhoopram and Vikesh Kumar has already been enlarged on bail vide orders dated 18.1.2019 and 25.7.2018, respectively, under Sections 147, 148, 149, 323, 504, 506 & 427 I.P.C and Section 3(2)(5) of SC/ST Act. Thereafter, charge-sheet came to be filed against the appellants adding sections such as Sections 307, 379 of I.P.C. and 4/21 of Mining Act. It is submitted that injuries sustained by injured namely, Dharmendra and Abhishek were simple in nature. Therefore, no offence under Section 307 is made out against the appellants. So far as the case under Sections 379 I.P.C. and 4/21 Mining Act is concerned, the same are punishable with the sentence less than seven years. It is also submitted that in earlier sections, the charge-sheet has also submitted against the appellant. 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 and that 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 and submits that the appellant is named in the FIR and certain allegations are made against him.

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 17.08.2023 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 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 appellants Bhoopram and Vikesh Kumar, shall be released on anticipatory bail till the conclusion of trial in the aforesaid case crime number 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 them 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 they have passport, the same shall be deposited by him before the S.S.P./S.P. concerned.
- (iv) The appellants shall make themselves 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 :- 2.11.2023

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