

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9702 of 2023

Appellant :- Vikky @ Vivek And 2 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Vijay Kumar Pandey

Counsel for Respondent :- G.A., Ziya Uddin

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellants, learned counsel for the informant, learned AGA for opposite party no.1 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 02.09.2023 whereby the Special Judge, SC/ST Act, Jaunpur has rejected the bail application No. 401 of 2023, arising out of case crime no. 208 of 2023, under Sections 147, 354D, 323, 376/511, 452, 328, 504, 506 of IPC, and under Section 3(2)(v) of SC/ST Act and Section 67 I.T. Act, Police Station Machhali Shahar, District Jaunpur.

As per the F.I.R, the allegation is that on 14.08.2023 at around 11 to 12 p.m when the informant was sleeping along with her family members, the appellants with other co-accused had taken away her daughter and committed obscene activities with her and addressed her with caste related words. Appellants made video and threatened her to life and also addressed the informant's family with caste related words and fled away.

Learned counsel for the appellant has submitted that appellants are innocent and have been falsely implicated in this case. He further submitted that a complaint case no. 19109 of 2022 was filed by the appellant Sheshmani against the husband of the informant in which the informant and her daughter was also named as accused, the incident in that complaint case was mentioned as of 13.08.2022 at around 10:00 p.m while as a counter blast present case has been lodged mentioning the incident dated 14.08.2023. In complaint case, the informant, her husband, her daughter and other persons have been summoned by the court. The victim refused to undergo for her medical examination, therefore entire story of the

prosecution is not relevant. It is also submitted that so far as video made by the appellants is concerned there is no evidence on either of the appellants making it viral to anyone. There is no evidence that appellants made video viral to some other person. Appellants are languishing in jail since 17.08.2023 having no criminal history. In case, the appellants are released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. assisted by the learned counsel for the respondent have supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellants and submitted that video was made by the appellant and named co-accused but the existence of complaint case filed by one of the appellant Sheshmani is not disputed as well the general role assigned in the present F.I.R is not disputed.

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 impugned order of rejection of bail 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; appellants being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court is of the opinion that the appellants are entitled to be enlarged on bail.

Let appellants, **Vikkey @ Vivek, Aashish Kumar and Sheshmani** be released on bail in the aforesaid case crime number on his 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 appellants shall remain present, in person, before the trial

court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The appellants shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The appellants shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The appellants shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellants is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the appellants, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The criminal appeal is allowed.

Order Date :- 31.10.2023

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