

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9924 of 2023

Appellant :- Mumtiyaj

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Pushpendra Singh

Counsel for Respondent :- G.A., Wahid Jamal

Hon'ble Mayank Kumar Jain, J.

1. List has been revised. Despite service of notice upon the opposite party no.2, no one appears on his behalf.
2. Heard learned counsel for the appellant, learned AGA for opposite party no.1 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 appellant to set aside the impugned order dated 20.04.2023 whereby the Special Judge, SC/ST Act, Bulandshahr has rejected the bail application of the appellant moved by him in Case Crime No.0076 of 2011, under Sections 363 and 366 of I.P.C. and Section 3(1)12 of SC/ST (Prevention of Atrocities) Act 1989, Police Station Khurja Dehat, District Bulandshahr.
4. As per the FIR the case of the prosecution is that on 15.06.2010 at around 8.00 p.m., the appellant along with other persons armed with weapons entered in the house of the informant and had taken away forcefully the daughter of the informant.
5. Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that first information report was challenged by the appellant and the prosecutrix in Criminal Misc. Writ Petition No.6908 of 2011 (Smt. Reshma @ Amrita & others v. State of U.P. and others) in which the prosecutrix appeared before the Court and admitted that she was major and was married with the appellant. Interim protection was granted to the appellant, thereafter, charge sheet came to be filed against the appellant and for that too was also challenged by the appellant before this Court in Application u/s 482 No.42220 of 2012 (Mumtiyaz and others v. State of U.P. and another) in which the proceedings were stayed, but on the basis of the judgment of the Hon'ble Supreme Court titled **Asian**

Resurfacing of Road Agency Pvt. Ltd. and another Vs. Central Bureau of Investigation passed in Criminal Appeal Nos.1375-1376 of 2013, appellant has been summoned. It is submitted that compromise has also taking place and he has filed before the court concerned. In her statement under Sections 161 and 164 Cr.P.C. has consistently stated that she living with the appellant as his wife as such there is no evidence against the appellant and appellant has prima facie case to be enlarged on anticipatory bail. In case, the appellant is released on bail, he will not misuse the liberty of bail.

6. Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant and submits that the allegations involved are very serious in nature but he could not point out any material to the contrary.

7. 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 bail passed by the trial court dated 20.04.2023 is, hereby, set aside.

8. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; appellant 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 appellant is entitled to be enlarged on bail.

9. Let appellant, Mumtiyaj 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 appellant 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 appellant shall not pressurize/intimidate the prosecution witnesses.

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

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

10. 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 appellant 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.

11. 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 appellant, if there is no other legal impediment.

12. 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.

13. The criminal appeal is **allowed**.

Order Date :- 30.10.2023

A.N. Mishra