

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10764 of 2023

Appellant :- Manish Rai @ Pampam Rai

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Vibhu Rai

Counsel for Respondent :- G.A.,Pradeep Kumar Rai

Hon'ble Mayank Kumar Jain,J.

1.Vakalatnama filed today by Sri Pradeep Kumar Rai, learned counsel on behalf of the informant is taken on record.

2. Heard learned counsel for the appellant, learned counsel for the informant, 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 01.05.2023 passed by the Additional Sessions Judge/Special Judge, POCSO Act, Ghazipur in Anticipatory Bail Application No. 1085 of 2023 is Special Sessions Trial No. 19 of 2017 arising out of case crime no. 2092 of 2016, under Sections 323, 504 and 354B of IPC read with Section 7/8 POCSO Act read with Section 3(1) (12) of SC/ST Act, Police Station Kotwali, District Ghazipur.

4. There is an allegation in the F.I.R against the appellant that on 13.11.2016 at around 8:45 p.m, he jumped over the wall of the informant along-with his brother-in-law (jija) Sunil Kumar and two other persons. The other two persons were wearing helmet at that time. Appellant along with other two persons knocked the door of the informant and hurled abuses. Soni aged 12 years, maid servant of the informant opened the door. Appellant and other persons committed indecent activities with her. On raising alarm when the wife of the informant came there she was also abused by the appellant and other accused persons. On hearing hue and cry the informant came out in the meantime Ajitabh Rai @ Rahul and Ashutosh with other persons also came there, the appellant threatened the informant showing him a country made pistol to withdraw the cases against Sunil Kumar and fled away from there.

5. Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. Admittedly, the informant had civil litigation with Sunil Kumar, jija of the appellant. Sunil Kumar also made a complaint against the

informant on which basis the armed licence of the informant was cancelled and for this reason the appellant is being implicated in this present case. The victim Soni did not disclose the name of the appellant during her statement recorded under Section 161 Cr.P.C while during her statement recorded under Section 164 Cr.P.C, she made improvement because she was tutored by the informant and his wife. The call detail report also discloses that the appellant was not at the place of occurrence at the relevant time. The process of 82 Cr.P.C was issued by the concerned court on the day when the anticipatory bail of the appellant was rejected. The injuries sustained by the wife of the informant and Soni were found to be simple in nature. It is also submitted that co-accused Ashok Rai and Piyush Rai have already been granted bail by this Court vide order dated 20.09.2023 passed in Criminal Appeal No. 7567 of 2023. 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.

6. Per contra, learned A.G.A. assisted by the learned counsel for the respondent have vehemently opposed the prayer for grant of bail to the appellant and submitted that the victim Soni during her statement recorded under Section 161 and 164 Cr.P.C has disclosed the name of the appellant. Charge sheet has been filed in the year 2017 and since then that appellant is absconding. The appellant is named in the F.I.R. The call detail report also discloses the location of the appellant near the house of the informant. In the incident two persons sustained injuries. It is also strongly argued that before the trial court an application for anticipatory bail was moved by the appellant. It was stated that on 13.11.2016 the appellant was present in Ghazipur city. He reached at the house of the informant. He enquired about the informant. He came to know that informant was not available at his house, therefore, the presence of the appellant at the house of the informant is admitted by him.

7. In rebuttal, it is submitted that the reason for visiting Ghazipur and the house of the informant was mentioned in paragraph-10 of the bail application moved before the trial court. Since on 14.11.2016, the visit of Hon'ble the Prime Minister was scheduled in Ghazipur, the appellant on 13.11.2016 along-with his wife was had gone to Ghazipur for shopping. After shopping he reached at the house of Sunil Kumar and left his wife there. The appellant then proceeded to R.T.I field where the programme of Hon'ble the Prime Minister was scheduled. It necessarily does not mean that

appellant committed the offence as alleged in the F.I.R.

8. 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 impugned order of rejection of bail passed by the trial court is, hereby, set aside.

9. 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.

10. In the event of arrest of the appellant **Manish Kumar Rai @ Pampam Rai**, shall be released on **anticipatory bail** till the conclusion of trial on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the Station House Officer of the police station 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 applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

(iv) The appellant shall make himself 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.

11. The criminal appeal is allowed.

Order Date :- 7.12.2023/PS