

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10691 of 2023

Appellant :- Pankaj Kumar Dixit

Respondent :- State of U.P. and Another

Counsel for Appellant :- Divya Upadhyay, Dr. Abhay Kant Upadhyay, Naveen Kumar Gautam

Counsel for Respondent :- G.A., Ashok Kumar Singh

Hon'ble Mayank Kumar Jain, J.

1. Heard learned counsel for the appellant, learned A.G.A. for the State, learned counsel for the respondent no.2 and perused the material placed on record.

2. 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 05.10.2023 whereby the Special Judge, SC/ST Act, Moradabad has rejected the second bail application of the appellant moved by him in Bail Application No.3947 of 2023 (Pankaj Kumar Dixit vs. State of U.P.) arising out of Case Crime No. 1344 of 2020, under Sections 420, 467, 468, 471, 406, 323, 504, 506 of IPC and Sections 3(2)(5), 3(2)(5ka), 3(1) (dha) of SC/ST Act, Police Station- Civil Lines, District- Moradabad.

3. As per the FIR, the case of the prosecution is that the appellant along with other co-accused persons have taken money from the informant as well as other innocent persons by playing fraud on account of providing job to them and when the informant asked for his money back, they abused him by using caste relating words.

4. Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. It is further submitted that the co-accused persons namely Prakul Sharma @ Prakul and Ramnaresh Sharma have been enlarged on bail by this Court as well as Hon'ble Supreme Court, respectively. Bail orders of the co-accused persons have been kept on record. As far as the role of co-accused Prakul Sharma @ Prakul, who has been granted bail by a co-ordinate Bench of this Court vide order date 15.11.2021 in Criminal Appeal No.3128 of 2021, is similar to the present appellant Pankaj Kumar Dixit, therefore the appellant is also liable to be enlarged on bail on the ground of parity. The appellant is languishing in jail since 11.07.2023. There is criminal history of one case against the appellant in which he is enlarged on bail,

copy of the bail order is on record. In case, the appellant is released on bail, he will not misuse the liberty of bail.

5. Per contra, learned A.G.A. as well as learned counsel for the respondent no.2 opposed the prayer for bail, but could not dispute the factual and legal submissions urged by learned counsel for the appellant.

7. 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 application. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

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

9. Let **appellant- Pankaj Kumar Dixit**, 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 appellant will not tamper with the evidence during the trial.

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

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

(iv) The appellant 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 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.

10. 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 :- 23.11.2023/Saif