

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10920 of 2023

Appellant :- Ayush Anand

Respondent :- State of U.P. and Another

Counsel for Appellant :- Satya Prakash Rai, Prateek Rai, Yogesh Kumar Singh

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

Hon'ble Mayank Kumar Jain, J.

1. Short counter affidavit filed today by learned counsel for 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, learned counsel for the informant 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 judgement and order dated 28.09.2023 passed by Special Judge, Mau in Anticipatory Bail Application No. 1265 of 2023, arising out of Case Crime No. 048 of 2023, under Sections 406, 419, 420, 467, 468, 471, 120B, 504, 506 of IPC, and under Section 3(2)(V) of SC/ST Act, Police Station Dakshin Tola, District Mau.
4. There is allegation in the F.I.R against the appellant that he got executed a registered agreement to sale by the informant on 23.01.2023 but no consideration was passed to informant.
5. Learned counsel for the appellant submits that appellant is innocent and has been falsely implicated in this case. F.I.R has been lodged against nine persons along-with 20 unnamed persons. It is submitted that agreement to sale dated 23.01.2023 is registered which was executed by the informant in favour of the appellant. Thereafter, on 17.02.2023, the appellant filed a civil suit no. 351 of 2023 (Vishal Bharti Vs. Ayush Anand) for cancellation of the agreement to sale in question. Subsequently informant and his mother executed another agreement to sale in favour of one Vinod Kumar after receiving advance money of Rs. 25,000/- It is also submitted that no offence under S.C/S.T Act is made out since she also belong to schedule caste. Caste certificate issued by

concerned authority is also brought on record. 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 informant have vehemently opposed the prayer for grant of anticipatory bail to the appellant and submitted that a complaint was filed on 10.03.2023, in this complaint an enquiry was made and the defence of the appellant is not accepted. The appellant preferred a writ petition to quash the F.I.R but it was also dismissed. Proceedings under Section 82 Cr.P.C adopted on 30.11.2023 against the appellant, therefore he is an proclaim offender. It is submitted that so far as the matter of execution of subsequent registered agreement to sell dated 20.02.2023 is concerned, it is an additional agreement. The learned counsel for informant relied upon the judgement of **State of Haryana Vs. Dharamraj, 2023 SCC OnLine SC 1085** and submitted that the appellant has not challenged the proceedings of declaring him as proclaim offender, therefore, he is not entitled to be released on anticipatory bail.

7. In rebuttal, learned counsel for the appellant submitted that bail application was filed on 16.10.2023 but by that time only non bailable warrant was issued by the court concerned while proceedings under Section 82 Cr.P.C. was adopted on 30.11.2023, therefore, at the time of filing of bail application the appellant was not proclaim offender.

8. This fact is controverted that a civil suit is pending for cancellation of sale deed dated 23.01.2023. The informant subsequently executed registered agreement to sell in favour of one Vinod Kumar. It is also not disputed that proceedings under Section 82 Cr.P.C were adopted after filing of the present bail application.

9. 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 28.09.2023 is, hereby, set aside.

10. 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.

11. In the even of arrest of the appellant-**Ayush Anand**, shall be released on **anticipatory bail** till submission of charge sheet 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 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.

The criminal appeal is allowed.

Order Date :- 6.12.2023

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