

Court No. - 15

Case :- CRIMINAL APPEAL No. - 956 of 2023

Appellant :- Lavkush Chauhan @ Lovkush

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lko. And Another

Counsel for Appellant :- Himanshu Suryavanshi

Counsel for Respondent :- G.A., Shashi Kant Tripathi

Hon'ble Shamim Ahmed, J.

1. Case is taken up in the revise call.
2. Heard Sri Himanshu Suryavanshi, learned counsel for the appellant, Sri Veer Bhan Singh, learned A.G.A-I for the State as well as Shri Shashi Kant Tripathi, learned Counsel for the opposite party No.2 and perused the entire record.
3. This Criminal Appeal under Section 14-A (ii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 16.03.2023 passed by the court of learned Special Judge, SC/ST Act, Barabanki, in Bail Application No.863 of 2023, filed by the appellant in Case Crime No.20 of 2023, under Section 420, 326, 504 and 506 I.P.C. and Section 3(1)(da), 3(1)(dha) and Section 3(2)(v) of SC/ST Act, relating to Police Station-Badosaray, District-Barabanki, whereby court below rejected the bail application moved by the appellant.
4. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case due to enmity and village rivalry. No such incident, as alleged by the prosecution, took place. He further submits that as per the version of the F.I.R., the informant was under treatment in Medical College, Lucknow for the infection in his finger and thumb, and the condition of the informant improved after the treatment from Medical College, Lucknow but the accused/appellant who was running a small clinic started treating the informant and assured him that his condition will be better after his treatment at his clinic. Thereafter, the condition of the informant deteriorated and consequently, he went through an operation of his thumb. The informant only with the intention to defame the appellant and to gain some financial aid from the State Exchequer lodged the present F.I.R. He further submits that the present F.I.R. has been lodged after five months of the alleged incident on false and fabricated facts. Adding to

his arguments, he next submits that the medical report suggests that proximal phalynx of thumb is partially present at base and rest its part and distal phalynx is absent. Middle and distal phalynx of the index finger is absent. He further submits that as per the medical report of the informant regarding the said incident Section 326 I.P.C. is not made out against the appellant, the copy of the medical report is annexed as Annexure No.4 to the affidavit filed in support of the bail application.

5. Learned Counsel for the appellant further submits that the appellant is neither a doctor nor running any clinic as alleged by the informant rather the appellant is a farmer and having agricultural fields and the informant having a grudge with the appellant and wanted to falsely implicate the appellant because the informant is the servant of the ex Gram Pradhan and the appellant supported the opponent in the local elections.

6. Several other submissions in order to demonstrate the falsity of the allegations made against the appellant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the appellant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It has also been pointed out that the accused is not having any criminal history and he is in jail since 17.02.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

7. Learned A.G.A-I as well as learned Counsel for opposite party No2. have opposed the prayer for bail, however, they are unable to dispute the contentions raised by learned counsel for the appellant and submits that allegations leveled against the appellant are based on material facts available on record and the lower court has rightly dismissed the bail application of the appellant.

8. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also in the absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that the alleged incident took place five months prior to lodging of the F.I.R., thus, it appears that present F.I.R. has been lodged after taking legal advice

from some legal expert only with the intention to gain some financial aid from the State Exchequer and there is no plausible explanation for huge delay of five months in lodging the present F.I.R. and also taking note of the fact that the informant was earlier treated in Medical College, Lucknow and there also the Doctor opined that he was suffering from dry Gangrene and also considering the fact that there is no credible evidence on record, which could show that the appellant is guilty or has committed the offence as alleged by the prosecution and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of **Dataram Singh vs. State of UP and another**, reported in **(2018) 3 SCC 22**, this Court is of the view that the learned court below has failed to appreciate the material available on record. The order passed by the court below is liable to be set aside.

9. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 16.03.2023 passed by the court of learned Special Judge, SC/ST Act, Barabanki, in Bail Application No.863 of 2023, filed by the appellant in Case Crime No.20 of 2023, under Section 420, 326, 504 and 506 I.P.C. and Section 3(1)(da), 3(1)(dha) and Section 3(2)(v) of SC/ST Act, relating to Police Station-Badosaray, District-Barabanki is hereby **set aside** and **reversed**.

10. Let the appellant, **Lavkush Chauhan @ Lovkush** be released on bail in the Case Crime No.20 of 2023, under Section 420, 326, 504 and 506 I.P.C. and Section 3(1)(da), 3(1)(dha) and Section 3(2)(v) of SC/ST Act, relating to Police Station-Badosaray, District-Barabanki with the following conditions:-

(i) The appellant shall furnish a personal bond with two sureties each of like amount to the satisfaction of the court concerned.

(ii) The appellant shall appear and strictly comply following terms of bond executed under section 437 sub section 3 of Chapter- 33 of Cr.P.C.:-

(a) The appellant shall attend in accordance with the conditions of the bond executed under this Chapter.

(b) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) 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.

(iii) The appellant shall cooperate with investigation /trial.

(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 court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi) In case, the appellant misuses the liberty of bail during trial, in order to secure his presence, proclamation under section 82 Cr.P.C. is issued and the appellant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(vii) The appellant shall remain present, 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 Cr.P.C. If in the opinion of the trial court 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 against him in accordance with law.

11. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the prayer for bail and must not be construed to have any reflection on the ultimate merit of the case.

12. The trial court is also directed to expedite the trial of the aforesaid case by following the provisions of Section 309 Cr.P.C., strictly without granting any unnecessary adjournments to the parties, in case there is no other legal impediment.

Order Date :- 8.11.2023

Piyush/-