

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2105 of 2023

Appellant :- Sushil Kumar Yadav

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

Counsel for Appellant :- Arun Sinha,Ram Chandra Singh,U mang Agarwal

Counsel for Respondent :- G.A.,Anil Kumar Gupta,Smt. Ruchi Gupta

Hon'ble Shamim Ahmed,J.

1. Case is taken up in the revise call.
2. Heard Shri Siddharth Sinha, Advocate holding brief of Shri Arun Sinha, learned Counsel for the appellant, Shri Adarsh Shukla, Advocate holding brief of Shri Anil Kumar Gupta, learned Counsel for the opposite party No.2 and Shri Navendu Srivastava, learned A.G.A. for the State.
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 23.06.2023 passed by Special Judge, SC/ST Act, Lucknow in Bail Application No.5136 of 2023, arising out of Case Crime No.883/2019 under Section 419, 420, 504 and 506 I.P.C. and Section 3(2)(Va) of SC/ST Act, Police Station-Chinhath, District-Lucknow, whereby the second bail application of the appellant has been rejected.
4. Learned counsel for the appellant submits that the appellant is innocent and has falsely been implicated in the present case and he has nothing to do with the allegation regarding sale of the house in question, whereas, he himself has paid the sale consideration amount in part to the owner, namely-Subhash Chandra, son of Om Prakash, Resident of Village Mahgaon Kachhar, District-Kaushambi in respect of the property in question but due to some unavoidable circumstances, he could not pay the entire amount, thus, the owner of the property in question sold the said property to one Gautam Rawat. He further submits that the appellant has no concern at all with the property in question nor with the alleged sale deed and he has been roped in present case only with the intention to create pressure on the seller of the property in question.
5. Learned Counsel for the appellant further submits that the

opposite party No.2 in his statement recorded before the court below on 01.12.2023 has clearly stated that no fraud and misrepresentation has been done by the appellant nor he has abused him with caste language nor he threatened for dire consequences. Thus, he submits that the opposite party No.2 has not supported the prosecution case. He further submits that even though, if it is believed to be true that a sale deed has been executed in favour of the appellant for that there is remedy available before the civil court for filing a suit for cancellation of sale deed but not lodging the F.I.R., thus, the present prosecution is nothing but an abuse of process of law.

6. Learned counsel for the appellant further submits that the appellant is in jail since 12.11.2020 and has by now done a substantial period of incarceration. In support of his argument, he has placed reliance of Hon'ble Apex Court judgment in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the appellant on conditions as may be imposed by the District and Sessions Judge, Faridabad."

7. Learned counsel for the appellant further submits that ratio of law applicable in above those cases is also applicable in the case of the appellant, therefore, the appellant may be enlarged on bail by this Court sympathetically.

8. Several other submissions regarding legality and illegality of the allegations made in the F.I.R. 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. The appellant undertakes that in case he is released on bail he will not misuse the liberty of bail and will cooperate in trial. It has also been pointed out that appellant has criminal history of seven case, this fact has been mentioned at para-26 of the

affidavit filed in support of the bail application. The appellant is in jail since 20.11.2020 and that in the wake of heavy pendency of cases in the courts, there is no likelihood of any early conclusion of trial.

9. Learned Counsel for the opposite party No.2 opposes the prayer for bail of the appellant and submits that the opposite party No.2 in his statement recorded under Section 164 Cr.P.C. which was recorded on 01.12.2023 has not supported the prosecution case, thus, he has no objection if the appeal is allowed and he does not dispute this fact that the appellant has already undergone substantial period of detention.

10. Learned A.G.A. also made an agreement with the submissions advances by learned Counsel for the opposite party No.2 and submits that prima facie case is made out against the appellant, thus, he is not entitled to get any relief by this Court.

11. 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 the absence of any convincing material to indicate the possibility of tampering with the evidence, considering that the appellant has nothing to do with the allegation regarding sale of the house in question, whereas, he himself had paid the sale consideration amount in part to the owner, namely-Subhash Chandra, son of Om Prakash, Resident of Village Mahgaon Kachhar, District-Kaushambi in respect of the property in question but due to some unavoidable circumstances, he could not pay the entire amount, thus, the owner of the property in question sold the said property to one Gautam Rawat; there appears force in the argument of learned counsel for the appellant that the appellant has no concern at all with the property in question nor with the alleged sale deed and he has been roped in present case only with the intention to create pressure on the seller of the property in question; there also appears force in the argument of learned Counsel for the appellant that the opposite party No.2 in his statement recorded before the court below on 01.12.2023 has clearly stated that no fraud and misrepresentation has been done by the appellant nor he has abused him with caste language nor he threatened for dire consequences. Thus, the opposite party No.2 has not supported the prosecution case; and 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 cases of **Kamal (supra)** and **Dataram Singh vs. State of U.P. and another, reported in (2018) 3 SCC 22**, this Court is of the view that the appellant may be enlarged on bail.

12. Accordingly, the appeal is **allowed**. Consequently, the impugned order 23.06.2023 passed by Special Judge, SC/ST Act, Lucknow in Bail Application No.5136 of 2023, arising out of Case Crime No.883/2019 under Section 419, 420, 504 and 506 I.P.C. and Section 3(2)(Va) of SC/ST Act, Police Station-Chinhat, District-Lucknow is hereby **set aside** and **reversed**.

13. Let the appellant, **Sushil Kumar Yadav** be released on bail in Case Crime No.883/2019 under Section 419, 420, 504 and 506 I.P.C. and Section 3(2)(Va) of SC/ST Act, Police Station-Chinhat, District-Lucknow 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.

14. 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.

15. 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 :- 19.12.2023

Piyush/-