

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2237 of 2023

Appellant :- Vikas Srivastav

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home,
Lucknow And Another

Counsel for Appellant :- Sushil Kumar Singh

Counsel for Respondent :- G.A.,Rahul Singh Rana

Hon'ble Shamim Ahmed,J.

1. Counter affidavit by the learned A.G.A. and rejoinder affidavit to the counter affidavit filed by the opposite party No. 2 have been filed today. The affidavits are taken on the record.

2. Heard Sri Sushil Kumar Singh, learned counsel for the appellant, Sri Mohammad Irfan Siddiqui, learned counsel for opposite party no. 2, learned A.G.A. for the State and perused the record.

3. Instant criminal appeal under section 14-A(2) of SC/ST Act (Prevention of Atrocities) Act, has been filed with a prayer to set aside the order dated 19.07.2023, passed by the Special Judge, (SC/ST Act), Lucknow, in Bail Application No. 5826 of 2023, relating to Case Crime No. 236 of 2019, under Sections 420, 406, 504, 506, of the IPC and Section 3(1)Da, 3(1)Dha, 3(2)(v) of the SC/ST Act, Police Station- Wazirganj, District- Lucknow, rejecting the bail-application of the appellant.

4. As per the F.I.R. version, the accused persons, including the appellant herein, by showing the papers of Will and Mutation of a plot, area 2275 Sq. Ft., to the complainant executed its registry in his favour on 27.10.2014, taking Rs. 25 lacs from him, but till date the accused persons have not given possession of the said plot to the complainant. When the complainant inspected the Sale-Deed office regarding the said plot, it came

to his knowledge that the sale-deed of the said plot had already been executed by maternal grandmother of the co-accused Satya Narayan (Testator) on 06.07.1990 in favour of Patel Nagar Sahkari Grah Nirman Samiti Ltd., Lucknow and this sale-deed is registered in the office of Sub-Registrar-III. The accused persons did not disclose this fact to the complainant at the time of execution of sale-deed in his favour on 27.10.2014 and Usurped Rs. 25 lacs from the complainant by playing fraud. When the complainant asked the accused persons to return the amount or to give land, they abused the complainant by caste-language and threatened to kill him.

5. Learned counsel appearing for the appellant submits that the appellant is innocent and has falsely been implicated in the present case. In fact, he has played no role in the transfer of the said land nor has received any sale-consideration from the complainant. He further stated that from the bare perusal of the contents of the FIR the criminal intent do not attract in the instant matter and the present appellant has not committed any cheat or fraud with the opposite party no. 2/complainant and the dispute, if any, is of civil nature and that too with respect to title by way of transfer of sale-deed and the dispute that the land was transferred to another name, namely Patel Nagar Sahkari Grah Nirman Samiti Ltd., Lucknow. The present appellant has no concern at all. He next added that there is no fault on the part of the present appellant and he on the bona fide belief that the will deed has been executed in favour of the co-accused Satya Narayan, merely asked the complainant to purchase the said plot of land and the present appellant had no knowledge that the land was earlier transferred in favour of Patel Nagar Sahkari Grah Nirman Samiti Ltd., Lucknow. The appellant has no criminal history. He next added that appellant is a law abiding citizen and is languishing in jail since 10.07.2023 and the

appellant undertakes that in case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

6. It was further submitted that the prayer for bail of present appellant may be considered by this Court sympathetically and the impugned bail-rejection order passed by the Trial Court may be set aside and reversed. The prosecution has tried to give colour to a civil dispute into a criminal case.

7. Learned counsel for the appellant further submitted that co-accused, Satya Narayan (seller) and Sandeep Singh alias Pradeep Kumar Singh, who were also named in the F.I.R. have already been granted bail. Satya Narayan (seller) has been granted bail by a Coordinate Bench of this Court vide order dated 10.07.2023 passed in Criminal Appeal No. 1826 of 2021, and Sandeep Singh alias Pradeep Kumar Singh has been granted bail vide order dated 14.12.2020 passed by the Special Judge [SC/ST (P.A.) Act], Lucknow. It is further submitted that the case of the present appellant is not on the worse footing than that of the aforesaid co-accused, thus, the bail application of the present appellant may also be allowed by this Court sympathetically and the impugned bail rejection order passed by the trial court may be set aside.

8. 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 he 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 appellant has no previous criminal history and is in jail since 01.07.2023 and that in the wake of heavy pendency of cases in the court, there is no likelihood of any early conclusion of trial.

9. Per contra, learned counsel for the opposite party no. 2 submits that the appellant is named in the FIR. He in spite of the full knowledge that the land in question was transferred to the Patel Nagar Sahkari Grah Nirman Samiti Ltd., Lucknow, has cheated the complainant and has been indulged in the conspiracy to again transfer the land in favour of the complainant by taking a huge amount of sale consideration, alongwith the co-accused. He submits that the complainant is suffering a lot as after his retirement, he has invested his all money and now he is on the verge of starvation. He further added that there is ample evidence against the appellant so as to connect him in the instant matter and, thus, he is not entitled for bail.

10. Learned AGA has also opposed the contention of the counsel for the appellant and submits that the appellant is involved in committing the offence and as such, he is not entitled for bail.

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, nature of evidence, period of detention already undergone, unlikelihood of early conclusion of trial and also in absence of any convincing material to indicate the possibility of tampering with the evidence; further there appears force in the argument of learned counsel for the appellant that he was not executor of the sale-deed nor he has received any sale-consideration from the opposite party No. 2 nor the land belongs to the appellant; his name was taken in the

F.I.R. only to give gravity to the offence and the matter is purely civil in nature and the prosecution has tried to give it colour of a criminal case; further there also appear force in the argument that the co-accused, Satya Narayan (seller) and Sandeep Singh alias Pradeep Kumar Singh, who have also been named in the F.I.R., have already been granted bail, thus, there appears also force in the argument of learned counsel for the appellant that the case of the present appellant is not on the worse footing than that of the aforesaid co-accused 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 cases of **Dataram Singh Vs. State of UP and another**, reported in **(2018) 3 SCC 22**, this Court is of the view that the learned trial court has failed to appreciate the material available on record. Thus, the impugned bail rejection order passed by the trial court is liable to be set aside.

12. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 19.07.2023 passed by the Court of learned Special Judge, (SC/ST Act), Lucknow, in Bail Application No. 5826 of 2023, relating to Case Crime No. 236 of 2019, under Sections 420, 406, 504, 506, of the IPC and Section 3(1)Da, 3(1)Dha, 3(2)(v) of the SC/ST Act, Police Station- Wajirganj, District- Lucknow, is hereby set aside and reversed.

13. Let the appellant, **Vikas Srivastava**, be enlarged on bail in Case Crime No. 236 of 2019, under Sections 420, 406, 504, 506, of the IPC and Section 3(1)Da, 3(1)Dha, 3(2)(v) of the SC/ST Act, Police Station- Wajirganj, 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 her counsel. In case of her absence, the trial court may proceed against her 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 her in accordance with law.

14. 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.

15. 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.

(Shamim Ahmed, J.)

Order Date :- 3.11.2023
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