

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2287 of 2023

Appellant :- Suraj And Another

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

Counsel for Appellant :- Pravin Kumar Verma, Rakesh Kumar Yadav, Vivek Kumar Verma

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Sri Vivek Kumar Verma, learned counsel for the appellants and learned A.G.A. for the State as well as perused the entire record.

This Criminal Appeal under Section 14-A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 01.08.2023 passed by learned Special Judge, S.C./S.T. Act, Lucknow in Bail Application No.6226 of 2023, Case Crime No.651 of 2016, under Sections 147, 435, 323, 504, 506 I.P.C. and Section 3(1)X of S.C./S.T. Act, Police Station Gosainganj, District Lucknow, whereby the bail application of the appellants has been rejected.

As per office report dated 21.11.2023, notice was issued to opposite party no.2, however, neither any unserved notice nor the acknowledgment due has been received so far. Since learned counsel for the appellants presses urgency in the matter as the same pertains to bail, therefore, this Court has no other option but to proceed further in the matter.

Learned counsel for the appellants submits that F.I.R. in this case has been lodged on the basis of an application moved under Section 156(3) Cr.P.C. It is stated that on 28.09.2016 when the complainant had gone in his relation at about 07:00 P.M., the accused persons put fire to his thatch which was situated in his Sahan land in which cattle were kept and due to the fire, cot and other house hold goods were burnt. The complainant came back from his relation on 29.09.2016 and then he came to know about the incident and an information was given to the police, but in this regard no action was taken. On 30.09.2016 the accused persons gave filthy abuses to the complainant and his family members at the house of the complainant. An information was given to the police by dial 100, but no action was taken then this application was moved.

Learned counsel for the appellants further submits that it is a long term dispute between the complainant and the appellant's brother. A case is also pending in the Revenue Court. The appellant had also given various application to Police Station - Gosainganj, Lucknow, the Chief Secretary, U.P., Lucknow and also to Hon'ble Minister, U.P. Government, but no action has been taken against the private respondent / complainant. He further submits that the F.I.R. has also been lodged with much delay.

Learned counsel for the appellants further submits that from perusal of version of F.I.R., Section 3(1)(X) of S.C./S.T. Act did not apply against the appellants because the incident does not took place in the public view and public place. In support of his argument, learned counsel for the appellants has relied upon a judgment rendered by the Hon'ble Supreme Court in the case of **Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710** and placed reliance upon para 13 and 18 of the aforesaid judgment, which are reproduced hereunder:-

"13. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."

Learned counsel for the appellants further submits that co-accused, namely, Rakesh Kumar @ Rakesh and Genda Lal @ Gendlal have already been released on bail by co-ordinate Bench of this Court vide order dated 10.02.2020 passed in Criminal Appeal No.69 of 2020. He further submits that the case of present appellants is not on worse footing than that of the co-accused who have already been enlarged on bail by co-

ordinate Bench of this Court.

Several other submissions in order to demonstrate the falsity of the allegations made against the appellants 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 appellants that they are ready to cooperate with the process of law and shall faithfully make themselves available before the court whenever required and are also ready to accept all the conditions which the Court may deem fit to impose upon them. It has also been pointed out that the accused are not having any criminal history and they are in jail since 25.07.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned A.G.A. opposed the prayer for bail, however, he is unable to dispute the contentions raised by learned counsel for the appellants.

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 F.I.R. in this case has been lodged on the basis of an application moved under Section 156(3) Cr.P.C.; there is a long dispute between the complainant and the appellant's brother wherein a case is also pending in the Revenue Court; the F.I.R. has also been lodged with much delay; from perusal of version of F.I.R., Section 3(1)(X) of S.C./S.T. Act did not apply against the appellants because the incident does not took place in the public view and public place; co-accused, namely, Rakesh Kumar @ Rakesh and Genda Lal @ Gendlal have already been released on bail by co-ordinate Bench of this Court and the case of present appellants is not on worse footing than that of the co-accused who have already been enlarged on bail by co-ordinate Bench of this Court 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** and **Hitesh Verma (Supra)**, 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.

Accordingly, the appeal is **allowed**. Consequently, the

impugned judgment and order dated 01.08.2023 passed by learned Special Judge, S.C./S.T. Act, Lucknow in Bail Application No.6226 of 2023, Case Crime No.651 of 2016, under Sections 147, 435, 323, 504, 506 I.P.C. and Section 3(1)X of S.C./S.T. Act, Police Station Gosainganj, District Lucknow is hereby **set aside** and **reversed**.

Let the appellants, **Suraj** and **Radhey Shyam** be released on bail in the Case Crime No.651 of 2016, under Sections 147, 435, 323, 504, 506 I.P.C. and Section 3(1)X of S.C./S.T. Act, Police Station Gosainganj, 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.

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.

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 :- 29.11.2023

Saurabh