

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2324 of 2023

Appellant :- Mangal Dev Yadav

Respondent :- State Of U.P Thru. Prin. Secy. Home Deptt. Lko. And 2 Others

Counsel for Appellant :- Manish Mani Sharma, Anil Kumar Tiwari, Awanish Kumar Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. The case is taken up in the revised call.
2. Heard Sri Anil Kumar Tiwari, the learned counsel for the appellant as well as Sri Ashok Kumar Srivastava, the learned A.G.A. for the State-opposite party No. 1 and perused the entire record.
3. Learned A.G.A. has filed counter affidavit and in reply thereto learned counsel for the appellant has filed rejoinder affidavit.
4. As per the office report dated 05.12.2023 notice has already been served upon the opposite party No. 2 but till date neither any counsel has appeared on behalf of opposite party No. 2 nor counter affidavit has been filed on her behalf.
5. Today when the case is taken up, neither any counsel has appeared on behalf of opposite party No. 2 nor counter affidavit has been filed on her behalf. It appears that the opposite party No.2 is not interested to file any counter affidavit.
6. The present criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 18.07.2023 passed by the Court of Special Court SC & ST Act, Ambedkar Nagar in Bail Application No. 960 of 2023, arising out of Case Crime No. 128 of 2019, under Section 307, 504, 506 I.P.C. and Section 3 (2) (v) of SC and ST Act, Police Station Maharua, District Ambedkar Nagar, whereby the bail application of the appellant has been rejected.
7. Learned counsel for the appellant submits that the informant Siyaram lodged F.I.R. on 04.08.2019 against the appellant and two other persons alleging therein that on 04.08.2019 his son Ateesh Kumar went to Vangaon for his wages and when he was returning to his house, Chandan Singh son of Bheemsen Singh, Bheemsen Singh

son of Radheshyam Singh resident of village Vangaon and Mangal Dev Yadav son of Ram Ashish Yadav at 7.30 P.M. fired at his on from Motor Cycle near village Udaipur as a result of which his son received fire arm injury on his right hand and they abused his son by using caste words and all accused persons ran away.

8. Learned counsel for the appellant further submits that statements of informant Siyaram and injured Ateesh Kumar were recorded and they were almost repeated the version of the F.I.R.

9. Learned counsel for the appellant further submits that medical examination of the injured Ateesh Kumar was conducted on 04.08.2019 and as per medical report two firearm injuries were found on the right hand of injured Ateesh Kumar, which are simple in nature and are not on the vital part of the body.

10. Learned counsel for the appellant further submits that police has also recorded the statement of independent witnesses, namely, Awadhesh Yadav and Akhilesh Singh who in their statements stated that the prosecution story is not correct and he had seen Ateesh Kumar and his friend Anil in Udaipur at 7.30 P.M. and they were talking and at that time he was well and further said that a false and cooked story was developed by Ateesh Kumar only in order to implicate falsely the appellant in the present case due to previous enmity.

11. Learned counsel for the appellant further submits that the appellant has been falsely implicated in the present case because the mother of the appellant, namely, Saroja Devi filed an application under Section 156 (3) Cr.P.C. against the informant, injured Ateesh and other persons before Magistrate for lodging FIR on 24.04.2017 in which case was registered and they have been summoned and the case is still pending. Further, a Civil Suit is also pending between the father of the appellant and informant before the court of Civil Judge (Junior Division), Ambedkar Nagar and the present F.I.R. has lodged only with the intention to create pressure, so that the matter may be compromised between the parties. He further submits that nothing was recovered from the possession of appellant or his pointing out. The entire prosecution story is false.

12. Learned counsel for the appellant further submits that the investigating Officer after recording the statement of witnesses and CDR report of injured Mobile comes to the conclusion that the entire prosecution story is false and fabricated and submitted Final Report in

the case on 15.06.2020. Being aggrieved by the Final Report submitted by the Investigating Officer, the informant filed protest petition and the court below vide order dated 14.04.2022 summoned the appellant to face trial without proper consideration of CDR report of injured mobile location, statement of witnesses and other relevant documents.

13. Learned counsel for the appellant further submits that the co-accused Bheem Sen and Chandan Singh, who were also involved in the present case were granted bail by the court below vide order dated 12.05.2023 and the case of the appellant is not on the worse footing than that of the co-accused, who have been granted bail by the court below, therefore, the appellant may also be enlarged on bail by this Court sympathetically.

14. 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. The appellant undertakes that in case he is released on bail he will not misuse the liberty of bail and will cooperate in trial. He has further submitted that there is no possibility of the appellant to intimidate or pressurize the witnesses or any other persons acquainted with the facts of the present case. It has also been pointed out that criminal history of applicant has been explained in para-18 of the rejoinder affidavit filed in support of the bail application. The applicant is in jail since 18.07.2023 and that in the wake of heavy pendency of cases in the courts, there is no likelihood of any early conclusion of trial.

15. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 18.07.2023 passed by the Court of Special Court SC & ST Act, Ambedkar Nagar in Bail Application No. 960 of 2023, arising out of Case Crime No. 128 of 2019, under Section 307, 504, 506 I.P.C. and Section 3 (2) (v) of SC and ST Act, Police Station Maharua, District Ambedkar Nagar deserves to be set aside and consequently,

the accused/appellant deserves to be enlarged on bail during pendency of the trial.

16. Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that there is active participation of accused/appellant in the crime. Therefore, the accused/ appellant is not entitled to be enlarged on bail and the instant criminal appeal deserves to be dismissed. However, he has been unable to dispute the other factual submissions advanced by the learned counsel for the accused/appellant.

17. 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, unlikelihood of early conclusion of trial and also in absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that there appears force in the argument of learned counsel for the appellant that as per medical examination of the injured Ateesh Kumar two firearm injuries were found on the right hand of injured Ateesh Kumar, which are simple in nature and are not on the vital part of the body; there appears force in the argument of learned counsel for the appellant that the co-accused Bheem Sen and Chandan Singh, who were also involved in the present case were granted bail by the court below vide order dated 12.05.2023 and the case of the appellant is not on the worse footing than that of the co-accused, who have been granted bail by the court below; further considering the fact that appellant is in jail since 18.07.2023 and has now by done a substantial period of detention 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 impugned order passed by the trial court is liable to be set aside.

18. Accordingly, the appeal is **allowed**. Consequently, the order 18.07.2023 passed by the Court of Special Court SC & ST Act, Ambedkar Nagar in Bail Application No. 960 of 2023, arising out of Case Crime No. 128 of 2019, under Section 307, 504, 506 I.P.C. and Section 3 (2) (v) of SC and ST Act, Police Station Maharua, District Ambedkar Nagar is hereby **reversed and set aside**.

19. Let the appellant, **Mangal Dev Yadav**, be enlarged on bail in Case Crime No. 128 of 2019, under Section 307, 504, 506 I.P.C. and Section 3 (2) (v) of SC and ST Act, Police Station Maharua, District Ambedkar Nagar 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.

20. 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.

21. The trial court is also directed to expedite the trial of the aforesaid case, within a period of one year from today, 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 :- 06.12.2023

Arvind