

Court No. - 16

Case :- CRIMINAL APPEAL No. - 370 of 2024

Appellant :- Kamlesh Kumar Yadav

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

Counsel for Appellant :- Dharmendra Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Case is taken up in the revised call.
2. On 08.02.2024 the Coordinate Bench of this Court issued notice to respondent No.2.
3. On 01.03.2024, the Coordinate Bench of this Court has passed the following order:-

"1. In pursuance of earlier order, notice has already been served on the complainant of the present case but no one has put in appearance on his behalf.

2. One week's time is granted to Shri Yatendra Agnihotri, learned A.G.A. for filing counter affidavit.

3. List this case in the week commencing 11.03.2024 within top ten cases."

4. Today when the case is taken up, there is no one present on behalf of respondent No.2 neither any counter affidavit has been filed, as such, it appears that respondent No.2 is not interested in contesting this case. Since the matter pertains to bail and learned counsel for the appellant presses urgency in the matter, therefore, this Court has no other option but to proceed for final arguments to decide the present appeal.

5. Heard Sri Dharmendra Singh, learned counsel for the appellant, Ms. Ankita Tripathi, learned A.G.A. for the State and perused the entire record.

6. Counter affidavit filed today in the Court by learned A.G.A. on behalf of State-respondent No.1 is taken on record.

7. 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 16.01.2024 passed by learned Special Judge (SC/ST Act), Barabanki in Bail

Application No.01 of 2024 arising out of Case Crime No.303/2023 under Section 307 I.P.C., Section 3(2)(v) of SC/ST Act and Section 3/25 Arms Act, Police Station-Masauli, District-Barabanki (Kamlesh Kumar Yadav vs. State of U.P.) whereby bail application of the appellant has been rejected.

8. Learned counsel for the appellant submits that the appellant is an innocent person and 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 the complainant is the father of the injured, namely-Gyan Singh and has lodged the present FIR alleging therein that three persons including the present accused fired at his son, who sustained injuries, thereafter, they fled from the spot. He further submits that whatever allegations leveled against the appellant are false and fabricated, the appellant was not at all involved in the alleged incident and his name has been taken only to falsely implicate him in the present case. He further submits that as per the injury report there are only two injuries of bullet shot and the son of the complainant has admitted this fact that three persons fired at him and he has not assigned any specific role to the present appellant, which clearly shows that the prosecution story is based on probabilities and false facts. He further submits that the son of the complainant has not stated that the present appellant has fired at him and even if, the story narrated by the complainant is believed to be true for the sake of argument, then also the son of the complainant has nowhere stated that the bullet fired by the present appellant has hit him.

9. Learned Counsel for the appellant further submits that the name of the present appellant only came into light only in the statements of the complainant and injured recorded under Section 161 Cr.P.C. where they have developed their case and has specifically named the present appellant. He further submits that as per the prosecution story there were three accused persons but the chargesheet has been filed against the present appellant and the name of one Anil Kumar and Sunil Kumar has been dropped from the chargesheet, which creates doubt on the prosecution story and the Investigating Officer has filed chargesheet only against the present appellant with the collusion of the complainant due to political rivalry.

10. Learned Counsel for the appellant further submits that it is case of false implication only with an intention to defame the appellant and his entire family in the society. He further submits that considering all these facts and circumstances, this Court may consider the prayer for bail sympathetically.

11. 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 08.10.2023 and the appellant has no criminal history, this fact finds mention at paragraph No.18 of the affidavit filed in support of the present appeal and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

12. Learned A.G.A. opposed the prayer for bail, however, she is unable to dispute the contentions raised by learned counsel for the appellant but she submits that prima facie offence is made out against the appellant and he is not entitled to get any relief, thus, the present appeal may be dismissed.

13. 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 there are contradictions in the statement of the complainant and injured recorded under Section 161 Cr.P.C. and version of the FIR. Further, there appears force in the argument of learned Counsel for the appellant that as per the injury report there are only two injuries of bullet shot and the son of the complainant has admitted this fact that three persons fired at him and he has not assigned any specific role to the present appellant, which clearly shows that the prosecution story is based on probabilities and false facts. There also appears force in the argument of learned Counsel for the appellant that the son of the complainant has not stated that the present appellant has fired at him and even if, the story narrated by the complainant is believed to be true for the sake of argument, then also the son of the complainant has nowhere stated that the bullet fired by the present appellant has hit him, the name of the present appellant only came into light only in the statements of the complainant and injured recorded under Section 161 Cr.P.C. where they have developed their case and has specifically named the present appellant and as per the prosecution story there were three accused persons but the chargesheet has been filed against the present appellant and the

name of one Anil Kumar and Sunil Kumar has been dropped from the chargesheet, which creates doubt on the prosecution story and the Investigating Officer has filed chargesheet only against the present appellant with the collusion of the complainant due to political rivalry 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.

14. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 16.01.2024 passed by learned Special Judge (SC/ST Act), Barabanki in Bail Application No.01 of 2024 arising out of Case Crime No.303/2023 under Section 307 I.P.C., Section 3(2)(v) of SC/ST Act and Section 3/25 Arms Act, Police Station-Masauli, District-Barabanki (Kamlesh Kumar Yadav vs. State of U.P.) whereby bail application of the appellant has been rejected, is hereby **set aside** and **reversed**.

15. Let the appellant, **Kamlesh Kumar Yadav**, be released on bail in the Case Crime No.303/2023 under Section 307 I.P.C., Section 3(2)(v) of SC/ST Act and Section 3/25 Arms Act, Police Station-Masauli, 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.

16. 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.

17. 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 :- 10.7.2024

Piyush/-