

Court No. - 13

Case :- CRIMINAL APPEAL No. - 1314 of 2024

Appellant :- Kamlesh Prasad Mishra

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

Counsel for Appellant :- Kapil Misra

Counsel for Respondent :- G.A.,P.K. Singh Bisen

Hon'ble Saurabh Lavania,J.

1. Short counter affidavit filed on behalf of opposite party no. 2, as also, Rejoinder affidavit filed by the appellant today is taken on record.

2. Heard Shri Kapil Misra, learned counsel for the appellant, as also, Shri P.K. Singh Bisen, learned Counsel for the opposite party no. 2 and Shri Ajai Kumar Srivastava, learned A.G.A. for the State.

3. The present appeal has been filed under Section 14-A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the impugned judgment and order dated 01.04.2024 passed by the Special Judge, S.C./S.T. Act, Pratapgarh in Bail application No. 466 of 2024, arising out of Case Crime No. 265 of 2023, under Sections - 386, 504, 506 I.P.C. and Section-3(1)(Dha), 3(2)(Va) r/w 3(2)(v) of S.C. / S.T. Act, registered at Police Station - Manikpur, District - Pratapgarh.

4. At the very outset, based upon the averments made in Paragraph 28, it is stated by learned Counsel for the appellant that the appellant is having criminal history of 12 cases. The details of cases are extracted hereinunder:-

i. Case Crime No. 283 of 1992 u/s 307 I.P.C. - Acquittal

ii. Case Crime No. 284 of 1992 u/s 25 Arms Act- Acquittal

iii. Case Crime No. 60 of 1995 u/s 395, 397, 412 I.P.C. - Acquittal

iv. Case Crime No. 70 of 1995 u/s 395, 397, 412 I.P.C. - Acquittal

v. Case Crime No. 75 of 1995 u/s 394, 402, 307 I.P.C. -

Acquittal

vi. Case Crime No. 191 of 1995 u/s 457, 380, 411 I.P.C. - Acquittal

vii. Case Crime No. 38 of 1996 u/s 307, 323 I.P.C. - Acquittal

viii. Case Crime No. 169 of 1996 u/s 3(1) Goonda Act I.P.C. - Infertuous by the lapse of time

ix. Case Crime No. 197 of 1996 u/s 110G I.P.C. - Discharged

x. Case Crime No. 212 of 1998 u/s 302, 201 I.P.C. - Acquittal

xi. Case Crime No. 31 of 2005 u/s 147, 148, 149, 307, 302, 404 I.P.C. - Released on Bail in Criminal Appeal No. 1791 of 2010

xii. Case Crime No. 37 of 2006 u/s 110 Cr.P.C. - Discharged.

In continuation it is stated that in Criminal Appeal no. 1791 of 2010, Case Crime No. 31 of 2005 under Section 147, 148, 149, 307, 302 & 404 I.P.C. registered at Police Station - Manikpur, District - Pratapgarh, the appellant was convicted and on 16.08.2022 he was released on bail after considering the period of incarceration of about 15 years and the observations made by Hon'ble Apex Court in **judgment and order dated 25.02.2022** passed in ***Criminal Appeal No. 308 of 2022 arising out of SLP (Crl.) No. 4633 of 2021: Saudan Singh Vs. State of UP.***

It is further stated that it appears that the FIR was lodged with oblique motive by the informant at the behest of one, Vivek Pratap Singh, who is the son of deceased in relation to whom the case crime no. 31 of 2005 was lodged and in the said case, the judgment of conviction was passed and challenging the same, the Criminal Appeal No. 1791 of 2010 was filed in which the appellant has been enlarged on bail after considering the period of incarceration i.e. of about 15 years and the observations made by the Hon'ble Apex Court in the case of ***Saudan Singh (supra)*** on 16.08.2022.

Explaining the aforesaid, it is stated that after lodging of FIR in issue dated 18.09.2023, a supplementary affidavit has been filed in the application seeking cancellation of bail in Criminal Appeal No. 1791 of 2010.

It is further stated that bare perusal of the contents of the FIR would show that no offence under S.C./S.T. Act is made out, as according to the FIR, the conversation between appellant and informant was held over phone, thus the conversation was not in public view.

It is also stated that as per FIR appellant demanded initially Rs. 10,000/- per month, thereafter, Rs. 2,500/- per month and also abused the informant and informant recorded the conversation and copied it to pen drive and this pen drive was handed over to police personnel, however, to prove this conversation, the authorities have not obtained certificate as required under Section 65-B of Indian Evidence Act, 1872. It is stated that in this regard, specific averments have been made in Paragraph 14 to 16. Referred Paragraph are quoted herein under:-

"(14.) That it is important to mention here that the investigating officer did not verify the authenticity of the alleged pen-drive.

(15.) That the investigating officer did not collect the voice sample of the appellant/applicant during the investigation to ascertain whether the voice in the pen-drive is of the appellant/applicant or not.

(16.) That the investigating officer did not obtain any certificate under Section 65(B) of Indian Evidence Act regarding the recording of the alleged pen-drive conversation from any forensic laboratory which is mandatory under the law and without obtaining any certificate filed charge sheet against the appellant/applicant."

Learned Counsel for the appellant further submitted that specific averments made in the aforesaid paragraphs have not been disputed / denied by the State in the counter affidavit, as also, in the short counter affidavit filed on behalf of the complainant.

He further contends that in the aforesaid background of the case, particularly that certificate under Section 65-B of Indian Evidence Act has not been obtained, the possibility of conviction of appellant is extremely bleak and accordingly, the appellant who is in jail since 03.01.2024, is entitled to be enlarged on bail.

Learned A.G.A. for the State and learned Counsel for the private opposite party vehemently opposed the prayer for bail, however, they could not dispute the submissions of the Counsel for the appellant including the submissions based upon Section 65-B of Indian Evidence Act.

Upon due consideration of the submissions advanced by the counsel for the appellant, learned A.G.A. for the State, as also, going through the contents of the appeal, impugned order and evidences and reasons recorded therein by the trial Court, including the submissions based upon Section 65-B of Indian Evidence Act, this Court finds that the present appeal is liable to be allowed. Accordingly, it is **allowed**.

Order dated 01.04.2024 passed by the Special Judge, S.C./S.T. Act, Pratapgarh in Bail application No. 466 of 2024, arising out of Case Crime No. 265 of 2023, under Sections - 386, 504, 506

I.P.C. and Section-3(1)(Dha), 3(2)(Va) r/w 3(2)(v) of S.C. / S.T. Act, registered at Police Station - Manikpur, District - Pratapgarh, is hereby set aside.

Let appellant- ***Kamlesh Prasad Mishra*** be released on bail in the aforesaid case crime number on his furnishing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following additional conditions :-

(i) The appellant shall cooperate with the prosecution during trial.

(ii) The appellant shall not tamper with the evidence during trial.

(iii) The appellant shall not pressurize/intimidate the prosecution witness(s).

(iv) The appellant shall not commit an offence.

(v) 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.

(vi) The appellant shall remain present before the trial court on each date fixed, either personally or through counsel.

(vii) The appellant shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court.

(viii) The appellant shall remain present, in person, before the trial court on the dates fixed for recording of statement under Section 313 Cr.P.C.

In case of default of above conditions, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law

As this order relates to enlargement of the appellant on bail, it is clarified that observation(s) made in this order shall have no bearing on the merits of the case and the trial court shall not be influenced by any observation(s) made in this order.

Order Date :- 17.5.2024

Lokesh Kumar