

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2164 of 2024

Appellant :- Rishi Panday

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

Counsel for Appellant :- Prateek Agrawal, Sunil Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Sri Prateek Agrawal, learned counsel for the appellant and Sri Anirudh Kumar Singh, learned A.G.A. for the State and perused the material placed on record.

The instant appeal under Section 14A(2) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities), Act, 1989 against the impugned order dated 21.05.2024 passed by the court of Additional Session Judge/ Special Judge SC/ST Act, District-Lucknow rejecting the anticipatory bail of the appellant under Section 323/504/506/354(A) I.P.C. and Section 3(1)(r) and Section 3(1)(s) of the SC/ST Act, 1989 arising out of FIR No.0072/2023, Police Station-PGI, District-Lucknow.

The prosecution case in brief is that the opposite party no.2 had lodged a first information report against three persons alleging therein that when he alongwith his female friend was going home through the PGI campus, the accused persons came there and grab the hand of his female friend and when the opposite party No.2 stopped them, then they threaten him for dire consequences and further abused them with caste language, thereafter, the present FIR was lodged.

Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case due to rivalry and only with the intention to defame the image of the appellant and his entire family in the society. He further submits that the appellant does not know the opposite party No.2 and they have never met before lodging of the FIR. He further submits that the appellant was not present with other co-accused persons, namely-Akash Pal and Vikram on the day of incident. He further submits that the opposite party No.2 throughout the investigation has failed to show that the appellant and opposite party No.2 have previous acquaintance and that the appellant knows the caste of the opposite party No.2, which creates a doubt on the prosecution case.

In support of his arguments, learned Counsel for the appellant places reliance on the judgment of Hon'ble Supreme Court in the case of ***Prithvi Raj Chauhan vs Union of India and others*** reported in ***(2020) 4 SCC 727*** and in the case of ***Rahna Jalal Versus State of Kerala and another (Criminal Appeal No. 883) of 2020***, decided on 17.12.2020. Further, he places reliance on the judgment of Division Bench of this Court in the case of ***Gopal Mishra vs. State of U.P. and 2 others*** passed in ***Criminal Misc. Writ Petition No.16343 of 2020 decided on 08.01.2021*** and submits that provision of Section 438 Cr. P.C. shall be available to an accused for anticipatory bail for alleged offences under the Scheduled Castes and Scheduled Tribes Act, 1989, if the accused/applicant is able to demonstrate that the complaint/F.I.R. does not make out "a prima facie" case for applicability of the provisions of the SC/ST Act 1989. In such cases the bar provided under sections 18 and 18A of the SC/ST Act, 1989 shall not apply.

Learned Counsel for the appellant further submits that the alleged offences are punishable up to seven years and after service of notice under Section 41-A Cr.P.C., the appellant had fully co-operated in the investigation of case. He further submits that the appellant will not induce and threat any person so as to dissuade him from disclosing any facts to the learned trial court. He further submits that the appellant is a permanent resident of District Lucknow and there is no chance of his absconding.

Several other submissions in order to demonstrate the falsity of the allegations made against the applicant 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 applicant 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 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. for the State has vehemently opposed the prayer for bail and submits that prima facie offence is made out against the appellant, as such, he is not entitled to be released on anticipatory bail.

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

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 as per version of the F.I.R., the opposite party no.2 had lodged a first information report against three persons alleging therein that when he alongwith his female friend was going home through the PGI campus, the accused persons came there and grab the hand of his female friend and when the opposite party No.2 stopped them, then they threaten him for dire consequences and further abused them with caste language but even in the FIR, the opposite party No.2 has only stated that the appellant abused him with caste language but he did not mention any caustic word used by the appellant, which would come within the ambit of Section 3(1)(r) and Section 3(1)(s) of SC/ST Act, 1989 and there appears force in the argument of learned Counsel for the appellant that the appellant was not present with other co-accused persons, namely-Akash Pal and Vikram on the day of incident and the opposite party No.2 throughout the investigation has failed to show that the appellant and opposite party No.2 have previous acquaintance and that the appellant knows the caste of the opposite party No.2, which creates a doubt on the prosecution case; the alleged offences are punishable up to seven years and after service of notice under Section 41-A Cr.P.C., the appellant had fully co-operated in the investigation of case and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Supreme Court in the case of ***Prithvi Raj Chauhan (Supra)***, ***Rahna Jalal (supra)***, ***Gopal Mishra (supra)*** and ***Dataram Singh vs. State of UP and another***, reported in ***(2018) 3 SCC 22***, this Court is of the view that the appellant may be enlarged on anticipatory bail.

Accordingly, the present appeal is **allowed**. Consequently, impugned order dated 21.05.2024 passed by the court of Additional Session Judge/ Special Judge SC/ST Act, District-Lucknow rejecting the anticipatory bail of the appellant under Section 323/504/506/354(A) I.P.C. and Section 3(1)(r) and Section 3(1)(s) of the SC/ST Act, 1989 arising out of FIR No.0072/2023, Police Station-PGI, District-Lucknow is hereby **set aside** and **reversed**.

In the event of arrest/appearance of appellant- **Rishi Panday** before the learned Trial Court in the aforesaid FIR No.0072/2023, Police Station-PGI, District-Lucknow, he shall be released on anticipatory bail on his furnishing personal bond of Rs.50,000/- and two solvent sureties, each in the like amount, to the satisfaction of S.H.O./Court concerned on the following conditions and subject to any other conditions that may be fixed by the learned Trial Court:

(i) that the appellant shall make himself available for interrogation by a police officer as and when required;

(ii) that 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) that the appellant shall not leave India without the previous permission of the court.

(iv) that the appellant shall appear before the trial court on each date fixed, unless personal presence is exempted; and

(v) that the appellant shall not pressurize/ intimidate the prosecution witness.

Order Date :- 15.7.2024

Piyush/-