

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2333 of 2022

Appellant :- Shakeel Ahmad Khan @ Sultan

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

Counsel for Appellant :- Avdhesh Shukla, Aman Shankar, Apoorva Jyoti, Arshad Ahsan Siddiqui, Dileep Kumar Yadav, Nandini Gupta, Neeraj Kumar Rawat, Rajeev Prakash Saxena, Ram Kishor, Sachchida Nand Goswami

Counsel for Respondent :- G.A., Jai Pratap Singh

Hon'ble Shamim Ahmed, J.

1. Case is taken up in the revised call.
2. Heard Sri Aman Agrawal, learned counsel for the appellant, Shri Jai Pratap Singh, learned Counsel for the respondent No.2, Sri Awadhesh Kumar Pandey, learned A.G.A. for the State and perused the entire record.
3. 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 10.08.2022 passed by the court of Special Judge, SC/ST Act, Raebareli passed in Bail No.1781/2022; Shakeel Ahmed Khan vs. State of U.P. in Sessions Trial No.249/2021 arising out of Case Crime No.13/2021, under Section 352, 386, 504 and 506 I.P.C. and Section 3(2) (V) of SC/ST Act, Police Station-Sareni, District-Raebareli whereby the bail application of the appellant has been rejected.
4. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case due to enmity and rivalry. No such incident, as alleged by the prosecution, took place. He further submits that the appellant was a practicing Advocate at District Court Raebareli and in High Court Lucknow Bench and the brief facts of the case are that the appellant has falsely taken the possession of a land, which belongs to Indran @ Dewahi, who is a deceased lady by committing forgery and sold it to one Seema Devi, on which the present informant and the other villagers made a complaint against the appellant to the concerned authorities and the allegations leveled against the appellant were found to be true. Thereafter, the appellant got annoyed with this act of the informant and started taking revenge from her by not allowing

to do agricultural work in the field of her father, who is bedridden and on 25.12.2020, the appellant alongwith other co-accused persons started abusing the informant and also asked for a sum of Rs.3,00,000/-. He further submits that the entire allegations leveled against the appellant are false and fabricated and the appellant is a person of repute in the society and has an impeccable career as Advocate. The real facts of the case are that there was a dispute between the appellant and his real brother, namely-Maqbool Ahmad Khan, who is also a practicing Advocate at District Court Raebareli, and the real brother of the appellant brought forward the informant to lodge the present F.I.R. as she belongs to SC/ST category only with the intention to somehow falsely implicate the present appellant in false cases so that he remains in jail and cannot come out at any point of time.

5. Learned Counsel for the appellant further submits that the appellant has been falsely implicated in twelve cases including the present one by bringing forward different persons and in all the cases, the entire prosecution story is false and fabricated and all the prosecutions have been initiated against the appellant with malafide intention. He further submits that the details of the criminal history of the appellant is explained in paragraph No.9 of the rejoinder affidavit filed in support of this appeal, which is already on record, wherein it has been clearly stated that in Case Crime No.403/2014, the appellant has been acquitted, Case Crime No.69A/1999 and 79/1999 final report has been submitted and in Case Crime No. 13/2021 which is the present case, his discharge application is pending in the concerned court and in rest of the cases mentioned in paragraph No.9 of the rejoinder affidavit, the appellant has already been enlarged on bail. He further submits that the aforesaid cases have been lodged against the appellant only with the intention to ruin the entire professional career of the appellant, who is a respectable person and was a practicing Advocate at District Court Raebareli. He further submits that in the present case the story developed by the opposite party No.2, who is near and dear to the real brother of the appellant and also belongs to SC/ST category is false and fabricated as the appellant belongs to forward caste and she has lodged an F.I.R. against the appellant only to get some financial aid from the State Exchequer. He further submits that even the F.I.R. in the present case has been lodged after a delay of 21 days of the alleged incident without any plausible explanation regarding the delay in lodging the F.I.R. which clearly shows that the F.I.R. has been lodged only after getting an advice from legal expert.

6. Learned Counsel for the appellant further submits that originally the dispute between the opposite party No.2 and the

appellant was in regard with land which was registered in the name and title of Late Indrani which was transferred in the name of the appellant after due process of law. He further submits subsequently, being the owner of land, the appellant transferred certain portion in favour of one Seema Devi by sale deed dated 11.01.2019. He further submits that civil dispute in relation to the Gata No.272 Ka is pending between the appellant and one Tirra, who is the father of the opposite party No.2 but the opposite party No.2 in conspiracy and in connivance with real brother of the appellant lodged the present F.I.R. making false and fabricated allegations against the appellant and the opposite party No.2 has tried to give criminal colour to a civil dispute, which is nothing but an abuse of process of law.

7. 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 23.06.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

8. Learned A.G.A. as well as learned Counsel for the opposite party No.2 opposed the prayer for bail and submit that the appellant is a habitual offender and several cases have been filed against the appellant, however, they are unable to dispute this fact that the cases which are mentioned in paragraph No.9 of the rejoinder affidavit, the appellant is either on bail or has been acquitted. They further submit that there is no property dispute between the appellant and his real brother, the contentions made by learned Counsel for the appellant in this regard are false. They further submit that prima facie offence is made out against the appellant, thus, he is not entitled to get any relief from this Court and the present appeal being devoid of merit and substance is liable to be dismissed.

9. 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 there appears force in the argument of learned

Counsel for the appellant that there was a dispute between the appellant and his real brother, namely-Maqbool Ahmad Khan, who is also a practicing Advocate at District Court Raebareli, and the real brother of the appellant brought forward the informant to lodge the present F.I.R. as she belongs to SC/ST category only with the intention to somehow falsely implicate the present appellant in false cases so that he remains in jail and cannot come out at any point of time; there also appears force in the argument of learned Counsel for the appellant that the story of present case is developed by the opposite party No.2, who is near and dear to the real brother of the appellant and also belongs to SC/ST category is false and fabricated as the appellant belongs to forward caste and she has lodged an F.I.R. against the appellant only to get some financial aid from the State Exchequer; the present case has been lodged after a delay of 21 days of the alleged incident without any plausible explanation regarding the delay in lodging the F.I.R. which clearly shows that the F.I.R. has been lodged only after getting an advice from legal expert; the dispute between the opposite party No.2 and the appellant was in regard with land which was registered in the name and title of Late Indrani @ Dewahi which was transferred in the name of the appellant after due process of law and being the owner of land, the appellant transferred certain portion in favour of one Seema Devi by sale deed dated 11.01.2019; the civil dispute in relation to the Gata No.272 Ka is pending between the appellant and one Tirra, who is the father of the opposite party No.2 but the opposite party No.2 in conspiracy and in connivance with real brother of the appellant lodged the present F.I.R. making false and fabricated allegations against the appellant 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.

10. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 10.08.2022 passed by the court of Special Judge, SC/ST Act, Raebareli passed in Bail No.1781/2022; Shakeel Ahmed Khan vs. State of U.P. in Sessions Trial No.249/2021 arising out of Case Crime No.13/2021, under Section 352, 386, 504 and 506 I.P.C. and Section 3(2) (V) of SC/ST Act, Police Station-Sareni, District-Raebareli is hereby **set aside** and **reversed**.

11. Let the appellant, **Shakeel Ahmad Khan @ Sultan** be released on bail in the Case Crime No.13/2021, under Section

352, 386, 504 and 506 I.P.C. and Section 3(2) (V) of SC/ST Act, Police Station-Sareni, District-Raebareli 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.

12. 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.

13. 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 :- 4.7.2024

Piyush/-