

Court No. - 16

Case :- CRIMINAL APPEAL No. - 3675 of 2024

Appellant :- Rajendra Prasad Kanaujia

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home
Lko. And 2 Others

Counsel for Appellant :- R.B.S. Rathaur

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the appellant, learned A.G.A. appearing for the State and perused the record.

This criminal appeal has been filed by the appellant under Section 14A (2) the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to set aside the order dated 28.10.2024 passed in Bail application No.3011/2024, arising out of case crime No.334/2009, under Section 409 I.P.C. and Section 3(1)(V) of S.C./S.T. Act, Police Station Gangaghat, District Unnao.

As per the compliance report, opposite party No.2 has died.

Learned counsel for the appellant submits that opposite party No.2 is formal party. There is no need to implead the heirs of the deceased opposite party No.2 as the loss is alleged to have been suffered by opposite party No.3.

Perused the record.

In view of the submissions advanced, the appellant is permitted to delete the opposite party No.2 during the course of the day.

Notice to respondent No.3 is served however, none appears.

Learned counsel for the appellant while pressing the appeal submits that, the appellant has been falsely implicated in this case. Nothing as claimed by the prosecution has been committed by the appellant.

It is alleged that although the digging of the pond was stopped by the local administration after the inquiry still the appellant who was posted as Gram Vikas Adhikari continued the work of digging of pond w.e.f. 01.02.2008 to 10.02.2008 and also paid the wages to the labours.

Learned counsel for the appellant further submits that at the most appellant has not followed the orders passed by the superior officers. No offence under SC/ST Act has been committed by him. Appellant retired eight years back. The charge-sheet has been filed in the year 2010. A petition under Section 482 Cr.P.C. was filed by the appellant wherein vide order dated 25.03.2010 further proceedings of case was stopped, order is on record as Annexure no.2 to the bail application. The F.I.R. shows that loss incurred in the digging of pond was ordered to be recovered from the officials responsible for the same vide order dated 09.03.2009 issued by District Development Officer, Unnao against that appellant filed Writ Petition No.1762 (S/S) 2009 wherein operation of the order dated 09.03.2009 by which recovery was directed to be made was stayed. He submits that no offence under SC/ST Act is made out neither any offence under Section 409 IPC is made out against the appellant as the money is alleged to have been given by the appellant to the poor labourers and no money has been received by the appellant himself or in his account.

It is further submitted that, the appellant is languishing in jail in this matter since 08.10.2024. Charge-sheet in the matter has already been submitted. There is no likelihood that the appellant-applicant after release on bail may flee from the process of law or will misuse the liberty of bail granted by this Court.

Learned A.G.A. opposes the prayer for bail, but could not confront the factual submissions made by the learned counsel for the appellant-applicant.

Considering the facts and circumstance of the case, appellant has no criminal history, appellant has retired eight years back and *prima facie* no offence appears to have been made out against the appellant so also the period of incarceration gone into by the appellant and without commenting upon merits, I am of the view that the learned court below has failed to appreciate the material available on record. In view of above, the order passed by the court below is liable to be set aside.

Accordingly, the appeal is allowed and the order dated 28.10.2024 passed in Bail application No.3011/2024, arising out of case crime No.334/2009, under Section 409 I.P.C. and Section 3(1)(V) of S.C./S.T. Act, Police Station Gangaghat, District Unnao, is set aside.

Let the appellant-applicant **Rajendra Prasad Kanaujia** involved in aforesaid case be released on bail on furnishing a personal bond with two sureties in the like amount to the

satisfaction of the court concerned subject to following conditions:-

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) 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.

(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, without sufficient cause, 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 and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant 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.

The pending application, if any, too stands disposed of.

Order Date :- 19.12.2024

Saurabh Yadav/-