

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1372 of 2023

Appellant :- Mukesh Kumar Yadav

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

Counsel for Appellant :- Syed Mohd Mahmood Hasan

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

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

As per office report dated 21.07.2023, the notice upon the opposite party no.2 has been served personally. However, no one has appeared on behalf of opposite party no.2 to argue this appeal.

This Criminal Appeal under Section 14-A (2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the order dated 16.03.2023 passed by the learned Special Judge, SC/ST Act, Barabanki in bail application No.905 of 2023, arising out of Case Crime No.262 of 2022, under Sections 419, 420, 467, 468, 471, 504, 506 I.P.C. and Sections 3 (1)D, 3 (1)Dh, 3(2)(V) SC/ST Act, Police Station Safdarganj, District Barabanki, whereby the bail application of the appellant has been rejected.

Learned counsel for the appellant has submitted that the present appellant has been falsely implicated in this case due to some ulterior motive as there is no material on record to suggest that the appellant was involved in the commission of the alleged offence. His further submission is that the appellant was not named in the first information report. However, upon conclusion of the investigation, charge sheet came to be filed against the present appellant without collecting credible evidence against him. His further submission is that the present appellant is neither the purchaser nor seller, nor is marginal witness of the alleged property.

Learned counsel for the appellant has drawn attention of this Court to the fact that the co-accused, Poonam Devi, who executed the alleged sale deed and belongs to SC/ST community and Mohammad Faheem, who is a marginal witness, have already been granted bail by co-ordinate Bench of this Court vide orders dated 14.03.2023 & 03.01.2023 passed in Criminal Misc. Bail Application Nos.12551 of 2022 & 15249 of 2022, respectively.

Learned counsel for the appellant has also submitted that in case, the appellant is enlarged on bail, he shall not misuse the liberty of bail and he shall also fully cooperate with the trial court in getting the trial concluded expeditiously. He has further submitted that there is no possibility of the appellant to intimidate or pressurize the witnesses or any other persons acquainted with the facts of the present case. The accused/appellant is languishing in jail since 09.10.2022 who has no previous criminal history.

For the aforesaid reasons, learned counsel for the appellant submits that

the instant criminal appeal deserves to be allowed. The impugned order dated 23.01.2023 deserves to be set aside and consequently the appellant deserves to be enlarged on bail during pendency of the trial.

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.

It is further submitted that the criminal history of the appellant has been explained in para-9 of bail application and the appellant is languishing in jail since 11.10.2022.

Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that though the name of the appellant did not mention in the first information report, however, upon conclusion of the investigation, charge sheet came to be filed against him. However, he could not disputed the other factual submission advanced by learned counsel for the appellant including the fact that the present appellant is neither the purchaser nor seller of the alleged property.

Having heard the learned counsel for the appellant, learned A.G.A. for the State and upon perusal of record, it transpires that the appellant was not named in the first information report. Upon conclusion of the investigation, charge sheet came to be filed against the present appellant. The present appellant is neither the purchaser nor seller, nor is marginal witness of the alleged property. The co-accused, Poonam Devi, who executed the alleged sale deed and belongs to SC/ST community and Mohammad Faheem, who is a marginal witness, have already been granted bail by co-ordinate Bench of this Court vide orders dated 14.03.2023 & 03.01.2023 passed in Criminal Misc. Bail Application Nos.12551 of 2022 & 15249 of 2022, respectively. The accused/appellant is languishing in jail since 09.10.2022 who has no previous criminal history.

Considering the facts and circumstance of the case, without expressing any opinion on the merits of the case, the Court 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.

Accordingly, the appeal is **allowed** and the order dated 16.03.2023 passed by the learned Special Judge, SC/ST Act, Barabanki in bail application No.905 of 2023, arising out of Case Crime No.262 of 2022, under Sections 419, 420, 467, 468, 471, 504, 506 I.P.C. and Sections 3 (1) D, 3(1)Dh, 3(2)(V) SC/ST Act, Police Station Safdarganj, District Barabanki is set aside.

Let the appellant, **Mukesh Kumar Yadav** be released on bail in the aforesaid case crime number 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.

Order Date :- 31.7.2023

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