

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2565 of 2024

Appellant :- Sandeep Tiwari

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

Counsel for Appellant :- Awdhesh Kumar Mishra, Mahraz

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the appellant as well as learned A.G.A. for the State and perused the record.

Counter affidavit, filed by the State, is taken on record.

Learned AGA states that due to inadvertent mistake the service report submitted by the SHO of the police station Raunahi, district Ayodhya/Faizabad has not been enclosed with the counter affidavit and, thus, it is placed for perusal of this Court, the same is taken on record.

The report, so submitted by the learned AGA, would reveal that the opposite party no. 2 has been personally/sufficiently served, however, he is not represented.

2. The instant criminal appeal under Section 14(A)(2) SC/ST Act has been filed by the appellant- **Sandeep Tiwari** for grant of bail and for setting aside/quashing the impugned order dated 02.08.2024 passed by the learned Special Judge, SC/ST Act, Ayodhya/Faizabad in Bail Application No.1503 of 2024, arising out of Case Crime No.0328 of 2018, under Sections 504 and 506 IPC read with Section 3(2) Va S.C./S.T. Act and Section 67 I.T. Act lodged at Police Station Raunahi, District Ayodhya/Faizabad, during trial.

3. Learned counsel for the appellant, while pressing the appeal, submits that the appellant has been falsely implicated in this case and he has not committed any offence, as claimed by the prosecution and, apart from the oral allegations, there is no material/evidence available against the appellant. It is further submitted that the IP Address of the device, from which the obscene/derogatory comments are shown to have been uploaded, have not been identified by the investigating officer and, at this stage, it could not be said that the derogatory comments with regard to the Constitutional Authority has been stated or uploaded by the appellant. It is further submitted that the informant of this case was not having any locus to lodge the FIR and, apart from

the oral evidence as well as screenshot of the facebook group, namely, 'Sohawal Samachar, Faizabad', which is not admissible in evidence, no other material/evidence is available against the appellant.

4. It is next submitted that the appellant is languishing in jail in this case since 02.08.2024. He is not having any previous criminal record to his credit. Charge-sheet in this case has also been filed and there is no apprehension that after being released on bail, he may flee from the course of law or may otherwise misuse the liberty.

5. Learned A.G.A., however, opposes the prayer of bail of the appellant by submitting that by the illegal act of the appellant a Constitutional Authority has been subjected to casteist remarks and, therefore, keeping in view the gravity of the offence, the appellant is not entitled to be released on bail.

6. Having heard learned counsel for the parties and having perused the record, it is reflected that the allegations against the appellant are with regard to making some derogatory comments upon a Constitutional Authority by posting the same on the facebook page of a local news channel, namely, 'Sohawal Samachar, Faizabad'. The defence of the appellant appears to be that during the course of investigation the IP Address device has not been identified by which these comments have been made and the same were not made by him. Counter affidavit filed by the State would reveal that there are various witnesses who have stated that derogatory comments were made by appellant, however, there is nothing in the counter affidavit of State which may suggest that the IP Address of the device from-where such comments have been uploaded have been identified. Perusal of the charge-sheet filed by the investigating officer, copy of which of which has been annexed by the State along with its counter affidavit, would reveal that the comments have been made by the appellant not with an intention to derogate any Constitutional Authority and the same were made in support of a political party. The appellant is languishing in jail in this case since 02.08.2024. He is not having any previous criminal record to his credit. There is no apprehension that after being released on bail, the appellant may flee from the course of law or may otherwise misuse the liberty.

7. It is to be recalled that restraint with regard to making comments on any social media platform is desired to be observed by every person and those who are sitting on the highest constitutional posts are to be respected by one and all and must be paid due regard and honour. It has to be understood that a person may have like or dislike against any person or authority but it does not mean that he may start posting derogatory and abusive language for the top Constitutional Authority. This is stated to be the first criminal act of the appellant. The guilt of the accused will be proved during the course of trial and keeping in view the fact that nothing has been placed before this Court which

may suggest that the IP Address of the device, from which the alleged obscene/derogatory comments have been posted, has been identified and considering all the facts and circumstances of the case and reasons narrated herein before, a case for bail is emerging in favour of the appellant, however, the learned special/trial court appears to have committed an illegality, while rejecting the plea of bail of the appellant.

8. In result, the appeal is **allowed** and the impugned order passed by the trial court is **set-aside**. Pending application(s) shall stand disposed of.

9. Let the appellant- **Sandeep Tiwari** involved in above-mentioned case, be released on bail on his 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 shall file an undertaking before the trial court that he shall restrain himself from putting any such defamatory/derogatory comment/posts on any social media platforms with regard to any authority, including the Constitutional Authorities.

(i-a) The appellant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The appellant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. Identity, status and residence proof of the appellant and sureties be verified by the Court concerned before the bonds are accepted.

12. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case

Order Date :- 18.9.2024

MVS/-