

A.F.R.

Reserved on 24.08.2023

Delivered on 06.09.2023

Neutral Citation No. - 2023:AHC-LKO:58585

Court No. - 15

Case :- CRIMINAL APPEAL No. - 877 of 2023

Appellant :- Jose Papachen And Another

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

Counsel for Appellant :- Vishva Nath Pratap Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. This Court vide order dated 24.08.2023 had passed the following order:

"1.The case is being taken up in the revised call.

2. Learned A.G.A. has already filed the counter affidavit. In reply thereto learned counsel for the appellant has filed the rejoinder affidavit. The same are available on record.

3. Vide order dated 31.07.2023 this Court had passed the following order:

"Learned A.G.A. has filed counter affidavit today in Court. The same is taken on record.

Learned counsel for the appellants prays for and is allowed ten days' time to file rejoinder affidavit.

As per Office Report dated 28.07.2023, notice has already been served upon opposite party no.2 but neither any counter affidavit has been filed till date nor any counsel is present to represent the opposite party no.2.

As a last opportunity, ten days' time is granted to the opposite party no.2 for filing counter affidavit.

Two days, thereafter, is allowed to the learned counsel for the appellants to file rejoinder affidavit.

Put up this case on 24.08.2023. "

4. Today, when the case is taken up, neither any counsel has appeared on behalf of opposite party No. 2 nor

counter affidavit has been filed on her behalf. It appears that the opposite party No.2 is interested to contest the case.

5. In the above circumstances, as the matter pertains to bail, this Court has no option but to proceed for final arguments to decide the present appeal.

6. Heard Sri Vishva Nath Pratap Singh, learned counsel for the appellants and Ms. Shikha Sinha, learned A.G.A. for the State.

7. Judgement reserved.”

2. The present criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 03.03.2023 passed by court of learned Special Judge S.C./S.T. Act, Ambedkar Nagar, in Bail Application No. 178/2023 (Jose Papachen and another Vs. State of U.P.), arising out of Case Crime No. 0031/2023, under Section 3 and 5 (1) of Uttar Pradesh Prohibition of Conversion of Religion Act, 2021 (here-in-after referred to as “Act 2021”) and Section 3 (1) (Dha) SC/ST Act, Police Station Jalalpur, District Ambedkar Nagar, whereby the bail application of the appellant has been rejected.

3. Learned counsel for the appellants submits that on 24.01.2023 an F.I.R. was lodged under Section 3 and 5 (1) of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (herein after called as the Act, 2021) and Section 3(1) (dha) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (Amendment 2015) against the appellants at Police Station Jalalpur bearing F.I.R. No. 0031 by the complainant, who is Zila Manti of Bhartiya Janta Party Ambedkar Nagar, alleging therein that the appellants are engaged for conversion of religion by various allurements amongst the communities of Scheduled Caste and Scheduled Tribe since three months. Consequently, the members of Scheduled Caste and Scheduled Tribe are annoyed with the activities of conversion of Religion by the appellants.

4. Learned counsel for the appellants further submits that the appellants are innocent and have been falsely implicated in the present case due to political rivalry. The appellants are not involved in any such type of activities, as alleged in the F.I.R. and the F.I.R. has been

lodged only to defame the image of the appellants and their entire family in the society.

5. Learned counsel for the applicant has placed emphasis on Section 3 of the Act, 2021 which provides prohibition of conversion from one religion to another religion by misrepresentation, force, fraud, undue influence, coercion and allurement, clearly specifying that conversion on the aforesaid grounds from one religion to another religion is prohibited. False allegations regarding allurement and undue influence for the purposes of mass conversion have been made. It has also been alleged that free treatment was being provided to patients in the hospital which can not be said to be a temptation for purposes of mass conversion.

6. Learned counsel for the applicant has also placed emphasis on Section 4 of the Act, 2021 which is being quoted here-in-below:

“4. Person competent to lodge First Information Report-Any aggrieved person, his/her parents, brother, sister, or any other person who is related to him/her by blood, marriage or adoption may lodge a First Information Report of such conversion which contravenes the provisions of Section 3.”

7. Learned counsel for the appellants further submits that the embargo under Section 4 as to who can lodge an F.I.R. regarding an offence under Section 3 of the Act, 2021 is absolute. The complainant is neither the aggrieved person, nor his/her parents, brother, sister or any other person, who is related to him/her by blood, marriage or adoption is aggrieved person as provided under Section 4 of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021. Complainant just being the Zila Mantri of ruling party has lodged the instant first information report for gaining his political goodwill amongst the members of society, although he is not competent to lodge the present FIR as per the provisions of Section 4 of the Act 2021.

8. Learned counsel for the appellants further submits that the appellants are not involved in activity of attempt to convert, either directly or otherwise, any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means and they have been falsely

implicated in the present case and the complainant has no locus to lodge the present F.I.R. as provided under Section 4 of the Act, 2021.

9. Learned counsel for the appellants further relied on the statements of villagers recorded under Section 161 Cr.P.C. and submits that villagers have stated in their statements that the appellants used to give them good teachings and even distribute Holy Bible books to them and even encourage them to get their children educated and it was further stated by the villagers that appellants used to organize assembly of villagers and used to perform “Bhandara” and they also implant amongst the children the knowledge to live peacefully. They even instructed the villagers not to enter into altercation and also not to take liquor.

10. Learned counsel for the applicant emphasized upon the definition of "allurement". He submits that providing good teachings, distributing Holy Bible books, encouraging children to get education, organizing assembly of villagers and performing “Bhandara” and instructing the villagers not to enter into altercation and also not to take liquor do not amount to allurement, rather it would be a failure on the part of the State to provide basic facilities to individuals in need of the same.

11. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 24.01.2023, who has no previous criminal history, and 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. 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.

12. For the aforesaid reasons, learned counsel for the appellants submits that the instant criminal appeal deserves to be allowed and the order dated 03.03.2023 passed by court of learned Special Judge S.C./S.T. Act, Ambedkar Nagar, in Bail Application No. 178/2023 (Jose Papachen and another Vs. State of U.P.), arising out of Case Crime No. 0031/2023, under Section 3 and 5 (1) of Uttar Pradesh Prohibition of Conversion of Religion Act, 2021 and Section 3 (1) (Dha) SC/ST Act, Police Station Jalalpur, District Ambedkar Nagar, deserves to be set aside and consequently, the accused/appellants deserve to be enlarged on bail during pendency of the trial.

13. 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 24.01.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

14. Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that there is active participation of accused/appellant in the crime. He states that the present case concerns mass religious conversions within the State of Uttar Pradesh from Hindu religion to Christianity through illicit means. The appellants are allegedly using psychological pressure for forceful conversions, as part of their plan to set up an Christianity state. Learned AGA further submits that appellants use to allure people by undue influence just to convert people from other religions to Christianity to carry out mass conversions. Therefore, the accused/ appellant is not entitled to be enlarged on bail and the instant criminal appeal deserves to be dismissed. However, he has been unable to dispute the other factual submissions advanced by the learned counsel for the accused/appellants that the complainant is Zila Manti of a ruling party is neither the aggrieved person, his/her parents, brother, sister or any other person, who is related to him/her by blood, marriage or adoption, as provided under Section 4 of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, thus he is not competent to lodge the present F.I.R.

15. In the considered opinion of this Court, after a detailed discussion and evaluation of the material on record it is to be taken into consideration by this Court that primary allegation against the appellants is of having contravened the provisions of Section 3 of the Act of 2021, which prohibits conversion or attempt of conversion either directly or otherwise from one religion to another by use of practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means. But there does not appear to

be any material as to show that appellants had used any undue influence or allurements to the said villagers for mass conversion. Rather appellants were involved in providing good teachings to children and promoting the spirit of brotherhood amongst the villagers and there does not appear to be existence of any material which would suggest conversion by use of force.

16. It also requires to be noted that the instant first information was not lodged by the competent person as required under Section 4 of the Act of 2021. The various categories of person enumerated in Section 4, who are competent to lodge the first information report are any aggrieved person. The words "any aggrieved person" at the very start of the said section can be interpreted to mean any person, especially since there is no provision under the I.P.C. or Cr.P.C., which bars or prohibits any person from lodging a first information report regarding cognizable offence. However, the words "any aggrieved person" is qualified by the subsequent categories and the words his, her parents, brother, sisters or blood relations by marriage and adoption included. Therefore, the words "any aggrieved person", if taken by themselves are extremely wide. The scope of the said term is completely whittled down by subsequent categories and therefore, it has to be said that any aggrieved person would be a person but is personally aggrieved by his or her fraudulent conversion be it an individual or in a mass conversion ceremony. Any interpretation to the contrary would render the remainder of Section 4 after the words "any aggrieved person" wholly redundant and also render the Section itself completely meaningless. Under the said circumstances the first information report dated 24-01-2023 was not lodged by a competent person.

17. 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, unlikelihood of early conclusion of trial and also in absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that there appears force in the argument of learned counsel for the appellants that the appellants are not involved in activity of attempt to convert, either directly or otherwise, any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurements or by any fraudulent means and they have been falsely implicated in the present case and the

complainant has no locus to lodge the present F.I.R. as provided under Section 4 of the Act, 2021 and there also appears force in the argument of learned counsel for the appellants that providing good teachings, distributing Holy Bible books, encouraging children to get education, organizing assembly of villagers and performing “Bhandara” and instructing the villagers not to enter into altercation and also not to take liquor do not amount to allurements and further considering that the complainant is Zila Mantri of a ruling party and is neither the aggrieved person, his/her parents, brother, sister or any other person, who is related to him/her by blood, marriage or adoption, as provided under Section 4 of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, thus the complainant is not competent to lodge the present F.I.R. and further considering the fact that appellant is in jail since 24.01.2023 and has now by done a substantial period of detention 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 impugned order passed by the trial court is liable to be set aside.

18. Accordingly, the appeal is **allowed**. Consequently, the order dated 03.03.2023 passed by court of learned Special Judge S.C./S.T. Act, Ambedkar Nagar, in Bail Application No. 178/2023 (Jose Papachen and another Vs. State of U.P.), arising out of Case Crime No. 0031/2023, under Section 3 and 5 (1) of Uttar Pradesh Prohibition of Conversion of Religion Act, 2021 and Section 3 (1) (Dha) SC/ST Act, Police Station Jalalpur, District Ambedkar Nagar is hereby **reversed and set aside**.

19. Let the appellants, **Jose Papachen and Sheeja**, be enlarged on bail in Case Crime No. 0031/2023, under Section 3 and 5 (1) of Uttar Pradesh Prohibition of Conversion of Religion Act, 2021 and Section 3 (1) (Dha) SC/ST Act, Police Station Jalalpur, District Ambedkar Nagar with the following conditions:-

- (i) The appellants shall furnish a personal bond with two sureties each of like amount to the satisfaction of the court concerned.
- (ii) The appellants 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 appellants shall attend in accordance with the conditions of the bond executed under this Chapter.

(b) The appellants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected, and

(c) The appellants 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 them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(iii) The appellants shall cooperate with investigation /trial.

(iv) The appellants shall file an undertaking to the effect that they 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 appellants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(vi) In case, the appellants misuse the liberty of bail during trial, in order to secure their presence, proclamation under section 82 Cr.P.C. is issued and the appellants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(vii) The appellants 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 appellants 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 them in accordance with law.

20. 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.

21. The trial court is also directed to expedite the trial of the aforesaid case, within a period of one year from today, 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 :- 06.09.2023

Arvind