

Court No. - 85

Case :- CRIMINAL APPEAL No. - 274 of 2023

Appellant :- Pakesh Kumar Chauhan

Respondent :- State of U.P. and Another

Counsel for Appellant :- Madan Singh, Abhilasha Singh, Ashutosh Yadav, Shiv Bahadur Singh, Shyam Lal

Counsel for Respondent :- G.A., Sanjay, Syed Mohammad Abbas Abdy, Vinod Kumar Maurya

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, learned AGA for the State and learned counsel for the informant and perused the material placed on record.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to set aside the impugned order dated 08.12.2022 whereby the Special Judge, SC/ST Act/Additional Sessions Judge, Moradabad has rejected the bail application of the appellant moved by him in Case Crime No. 363 of 2022, under Sections 364, 323, 506 IPC and Section 3(2)Dha, 3(1)The, 3(2)5 SC/ST Act, Police Station Thakurdwara, District Moradabad.

There is an allegation against the appellant that on 16.07.2022 at around 7.30 pm the son of the informant namely Vijendra aged 14 years was beaten up by the appellant along with other persons and was kidnapped. The whereabouts of Vijendra Kumar are not known. When the informant enquired about her son she was addressed with caste related words.

Learned counsel for the appellants has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that the informant is not the eye witness as admitted by her during her statement under Section 161 Cr.P.C. In fact an FIR was lodged by the appellant against the son of the informant under Section 454, 380, of IPC since he entered into the house of the appellant with intention to commit theft. It is also submitted that during investigation it surfaced that when Vijendra tried to escape from the house of the appellant, he was caught by the appellant but any how he managed to escape. He did not returned to his home out of fear. There is no evidence except suspicion against the

appellant that he has kidnapped the son of the informant. The appellant has no criminal history to his credit. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellant is languishing in jail since 29.11.2022. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. assisted by learned counsel for the informant has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant and argued that independent witnesses such as Avdhesh Kumar and Rajesh Kumar had seen Vijendra in the company of the appellant before his disappearance. The son of the informant is yet to be recovered. The Habeas Corpus Writ Petition No.32/2023 is pending consideration before this Court. Charge sheet has also been submitted against the appellant.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has properly considered the case of the appellant. Hence, in view of above consideration, the order of rejection of bail passed by the trial court dated 08.12.2022 is affirmed.

Having considered the submissions of the parties noted above, finding no force in the submissions made by the learned counsel for the appellant; without expressing any opinion on the merits of the case, the Court is of the opinion that the appellant is not entitled to be enlarged on bail and the appeal deserves to be dismissed.

The criminal appeal is dismissed.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

Order Date :- 30.11.2023

Mohit