

Court No. - 85

Case :- CRIMINAL APPEAL No. - 848 of 2023

Appellant :- Nitendra Bhargav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Jaysingh Yadav, Vikram Singh Shrivastava

Counsel for Respondent :- G.A., Bipin Kumar Jaiswal

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, learned AGA for the State and Sri Vipin Kumar, 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 07.12.2022 whereby the Special Judge, SC/ST Act/Additional Sessions Judge, Lalitpur has rejected the bail application of the appellant moved by him in Case Crime No. 94 of 2022, under Sections 363, 366 IPC and Section 3(2)V SC/ST Act, Police Station Bar, District Lalitpur.

In the FIR, there is an allegation against the against the co-accused Rajesh that he has enticed away the daughter of the informant on 01.07.2022 at around 9.00 pm along with one unnamed person.

Learned counsel for the appellants has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that appellant is not named in the FIR. The name of the appellant was disclosed by informant during his additional statement. It is also submitted that during the trial informant was examined as PW-1 but the witness did not disclose anything against the appellant and he was declared to be hostile. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellant has criminal history of one case to his credit which is explained in appeal. Appellant is languishing in jail since 15.08.2022. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail

to the appellant and argued that there are eye witnesses namely Summa, Rajkumar and Jagbhan who had seen the daughter of the informant with the co-accused Rajesh (named in the FIR). PW-1 during his testimony before the trial Court has also disclosed about these witnesses. The statements of these witnesses are yet to be examined. Apart from evidence of CDR that appellant had conversation with accused Rajesh who is also missing. The victim is also yet to be recovered.

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 07.12.2022 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.

However, the trial court is directed to record the statement of witnesses within three months from the date of production of certified copy of this order.

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 :- 7.11.2023

Mohit