

Court No. - 85

Case :- CRIMINAL APPEAL No. - 2709 of 2022

Appellant :- Mohd. Mumtaz

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shashi Kant Rai, Alok Dubey, Pradeep Kumar Singh

Counsel for Respondent :- G.A., Maan Singh

Hon'ble Mayank Kumar Jain, J.

1. Supplementary affidavit filed today by learned counsel for the appellant is taken on record.

2. The appellant was granted short term bail/interim bail vide order dated 17.05.2023 passed in Criminal Appeal No. 2709 of 2022 by the co-ordinate Bench of this Court with the following conditions:-

"Applicant will get his marriage registered with the Registrar and produce the registration certificate before this court by filing supplementary affidavit on the next date fixed".

3. Vide supplementary affidavit marriage registration certificate is brought on record stating that appellant had performed the marriage with the prosecutrix.

4. Learned counsel for respondent no. 2 also filed an affidavit in which the factum of marriage on 18.08.2023 is accepted.

5. Heard learned counsel for the appellant; Sri Maan Singh, learned counsel for opposite party no.2, learned AGA for opposite party no.1; and perused the material placed on record.

6. 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 23.03.2022, whereby the Special Judge, SC/ST Act/ Additional Sessions Judge, Gorakhpur has rejected the bail application of the appellant moved by him in Case Crime No. 407 of 2021, under Sections 320, 326, 328, 506, 406, 379, 420 IPC and Section 3(1) (da), (Dha) and 3(2)5 of SC/ST (P.A) Act and Section 18 of Human Organ Transplantation Act, Police Station Gola, District Gorakhpur.

7. There is allegation against the appellant that he has committed offence of rape, threatening, etc., against the informant belonging to schedule caste.

8. Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. There is no independent witnesses who supported the prosecution story. Both the appellant and informant are major and living together with their own sweet will, therefore, no offence as mentioned in the F.I.R is made out against the appellant. He further submitted that as per the order dated 17.05.2023 of this Court marriage registration certificate of the appellant with the prosecutrix is brought on record through supplementary affidavit. Appellant is languishing in jail since 15.02.2022 having no criminal history. In case, the appellant is released on bail, he will not misuse the liberty of bail.

9. Learned counsel for respondent no. 2 also admitted the factum of marriage on 18.08.2023 through and affidavit filed on behalf of respondent no. 2

10. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; keeping in view uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court is of the opinion that the appellant is entitled to be enlarged on short term bail for six months.

11. Let appellant, **Mohd. Mumtaz**, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) 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.

(ii) The appellant shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellant shall remain present, in person, 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 of Cr.P.C.

(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 the trial court.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel.

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

12. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that 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 in accordance with law.

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

14. 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.

15. The criminal appeal is allowed.

Order Date :- 23.11.2023

PS