

Court No. - 85

Case :- CRIMINAL APPEAL No. - 7247 of 2023

Appellant :- Munesh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Manoj Kumar Mishra, Prachi Shukla, Shashi Kumar Mishra, Tabassum Bano

Counsel for Respondent :- G.A., Sunil Kumar Yadav

Hon'ble Mayank Kumar Jain, J.

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

As per office report, notice has been served personally on informant/opposite party no.2. Despite service of notice upon the informant/opposite party no.2, no one has put in appearance on his behalf.

Heard learned counsel for the appellant, learned Additional Government Advocate for the State of U.P. and perused the record.

This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant with the prayer to set aside the order dated 08.05.2023 passed by learned Special Judge (SC/ST Act), Etah in Criminal Misc. Bail Application No. 1420 of 2023, arising out of Case Crime No. 19 of 2023, under Sections 323, 354, 376, 504 I.P.C., Section 3(2)V of SC/ST Act, Police Station Rijor, District Etah.

There is an allegation in the F.I.R is that on 12.02.2023 at around 3:00 p.m, when the daughter of the informant was going to her field, the the appellant committed indecent activities with her.

Learned counsel for appellant has submitted that the appellant is innocent and have been falsely implicated in this case. The F.I.R of the incident has been lodged with a delay of 4 days and no explanation is offered for such delay. Admittedly, the age of the victim is 18 years, therefore, she was a consenting party. During her medical examination no internal injury was noted by the medical officer. Some photographs are also brought on record which indicate that the victim was having affair with some other

boys also. So far as external injury noted in the medical report are concerned they are caused by her family members. There is no allegation of rape against the appellant in the F.I.R and the informant during her statement 161 Cr.P.C. also did not said anything about committing rape by the appellant. It is also submitted that the incident is said to have taken place in the boundary of complainant house, therefore, no offence under S.C/S.T. act is made out. The appellant is languishing in jail since 07.04.2023. Criminal history of the appellant is explained in paragraph 8 and 9 of the supplementary affidavit. and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the early disposal of the case.

Per contra, learned A.G.A. vehemently opposed the prayer for bail and submitted that the victim in her statement under Sections 161 and 164 Cr.P.C consistently stated that the appellant committed rape with her, she was also beaten up by the appellant on her face and sustained injuries, these injuries are noted in the medical report. It is also submitted that appellant is named in the F.I.R.

Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the active participation of the appellant in the commission of crime, I do not find it fit case for bail.

Since the trial court has passed the impugned order after appreciating the evidence available on record, there is no occasion to interfere with the finding of fact recorded by the trial court, hence, the present criminal appeal lacks merit and deserves to be dismissed.

Accordingly, the criminal appeal is dismissed.

However, the trial court is directed to expedite the trial and to record the statements of the prosecution witnesses within a period of three months from the date of receipt of certified copy of this order without granting any unnecessary adjournment to either of the parties subject to full co-operation by the appellant.

Order Date :- 23.11.2023

PS