

Court No. - 84

Case :- CRIMINAL APPEAL No. - 7258 of 2023

Appellant :- Shubahm Awasthi

Respondent :- State of U.P. and Another

Counsel for Appellant :- Gulrez Khan, Javed Husain Khan

Counsel for Respondent :- G.A., Vinay Kumar

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Heard learned counsel for the appellants, learned counsel for opposite party no.2 and perused the record.

This appeal under Section 14-A(2) of SC/ST (Prevention of Atrocities) Act, 1989 has been preferred against the order dated 06.06.2023 passed by the Special Judge (SC/ST) Act/ Additional Sessions Judge, Banda in Bail Application No.1009 of 2023 (C.N.R. No. UPBD010019882023) State Vs. Shubham Awasthi (arising out of Case Crime No.320 of 2022) under Sections 323, 376, 504, 506 I.P.C. & Section 3(2) 5 SC/ST Act, P.S. Girwan, District Banda, whereby the bail application of the appellant was rejected.

As per the version of the FIR, the present appellant is said to have taken the alleged victim with him on 27.08.2019 with the assurance that he would solemnize marriage with her. There they remain in a tenanted house for a long time. Then they also resided at Banda for some time but the appellant never solemnized marriage with the alleged victim. As they were living as husband and wife, out of this relationship a female child was born to them on 02.06.2021 but till now the appellant has refused to solemnize marriage with her. He has deserted her and humiliates her by using caste based words. He thrashes her and gives threat of life also.

It is argued by the learned counsel for the appellant that the first informant/victim was major on the date when she accompanied him. She was a major and married lady. Soon after two days of her marriage, she came with the appellant as per her own sweet suit will. She had also filed a suit under Section 12 of Hindu Marriage Act against her first husband on 17.10.2019 for declaring her marriage with her first husband to be void. In her statement under Section 164 Cr.P.C. also, the victim has stated that she was brought by the appellant on the assurance that he will keep her as his wife

then she was kept for one and a half year at Gujarat. In Gujarat they lived as husband and wife. Thereafter they came to Banda and after that they again went back to Ahmendabad, where a daughter was born to the alleged victim on 02.06.2021. But now the family members of the appellant and appellant are denying to keep her as the wife of the appellant. They used caste based words against her, hurled wild abuses and thrashed both mother and daughter. They also gave her threat of life. In her statement under Section 161 Cr.P.C. also, she has stated that she was brought by the appellant with him on the assurance of keeping her as his wife, though for a small time she was kept happily but after that she was deserted. On the basis of these statements it is claimed that the alleged victim was a major and married lady, who left her matrimonial house with her own sweet will to live with the appellant. According to her, she is still ready to live with the appellant, if he keeps her happily, thus, being a case of consensual relationship counsel for the appellant claimed bail.

Learned counsel for opposite party no.2 opposed the prayer and submitted that on the pretext of marriage the victim/ first informant was taken by the appellant with him but now he is denying to solemnize marriage. Out of the physical relationship of both the parties one female child was born, who is with the victim. If she is not kept with the appellant her life would be ruined.

From the perusal of the record, it is clear that being a married and major lady the victim stayed with the appellant for years on her own volition and a daughter was born out of this consensual relationship. Apart from the allegations under Section 376 IPC there is allegations of offence under Sections 323, 504, 506 IPC and Section 3(2) (v) of SC/ST Act also.

In view of the above and having regard to the facts, circumstances of the case and keeping in view the evidence, complicity of accused, I am of the view that the appellant is entitled for bail.

Accordingly, this appeal is **allowed** and the impugned order dated 06.06.2023 rejecting the bail of the appellant is set aside.

Let the appellant- **Shubahm Awasthi**, who is involved in Case Crime No.320/ 2022, under Sections 323, 376, 504, 506 I.P.C. & Section 3(2) 5 of SC/ST Act, P.S. Girwan, District Banda be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:-

1. The appellant will attend and co-operate in the trial court proceedings pending before the court concerned on the dates fixed after release.
2. The appellant will not tamper with the witnesses.
3. The appellant will not indulge him in any illegal activities during the bail period.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the trial court shall be at liberty to cancel the bail and send the appellant to prison.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 13.10.2023

Radhika