

Court No. - 85

Case :- CRIMINAL APPEAL No. - 7640 of 2023

Appellant :- Shivam

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sanjay Kumar Dubey

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

Heard learned counsel for the appellant, learned AGA for opposite party no.1 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 10.07.2023 whereby the Additional Session Judge/Special Judge, SC/ST Act, Hapur has rejected the bail application no. 1977 of 2023 of the appellant moved by him in Case Crime No. 73 of 2023, under Section 377 of IPC and under Section 3(2)(5) of SC/ST Act, Police Station Kapoorpur, District Hapur.

As per the F.I.R, the allegation is that appellant had committed unnatural sex with the victim, who is mentally retarded and is brother of informant.

Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case due to village party bandi and to restrain him from going to Saudi Arabia. It is submitted that medical report does not corroborate with the version of the F.I.R since no injury was seen at the time of medical examination of the victim in the anal region. It is also submitted that victim sustain injuries when he slipped from the "maidh" of the field. Appellant is languishing in jail since 17.05.2023 having no criminal history. 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 submitted that victim is mentally retarded as mentioned in the F.I.R and as opined by the Doctor victim has 90% hearing disability. It is also submitted that eye witness Savita, who is the sister of the victim has specifically and consistently stated

that she had seen the appellant committing unnatural sex with the victim.

Considering the fact that victim has 90% hearing disability and eye witness Savita, who is the sister of the victim specifically and consistently stated that she had seen the appellant committing unnatural sex with the victim, 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 victim and eye witness within a period of four 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 :- 6.11.2023

PS