

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9205 of 2023

Appellant :- Arif

Respondent :- State of U.P. and Another

Counsel for Appellant :- Maimoona Fatima, Mohd Nasir

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

Ms. Reema Gupta, learned A.G.A. informs the court that notice upon opposite party no.2/informant has been duly served but no one appears on her behalf.

Heard learned counsel for the appellant, learned AGA for the State 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 26.05.2023 whereby the Special Judge, SC/ST Act, Aligarh has rejected the bail application No. 3030 of 2023, arising out of case crime no. 563 of 2022, under Sections 366, 120-B, 368, 504, 506 of IPC, and under Section 3(2)(5) of SC/ST Act, Police Station Sasni Gate, District Aligarh.

Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. As per the allegation of F.I.R on 26.11.2022 at around 11.30 am, the daughter of the informant was enticed away by the appellant. It is further submitted a tutored statement has been given by the victim recorded under Section 161 Cr.P.C. while in her statement recorded under Section 164 Cr.P.C., she stated that she is major girl and she joined the company of appellant at her own accord. It is further submitted that co-accused Azad, Shazia & Nazia have already been enlarged on bail by this Court vide orders dated 27.09.2023 and 10.05.2023 in Criminal Appeal Nos. 8626 of 2023 and 193 of 2023 respectively. The appellant does not have any criminal history to his credit. Lastly, it is submitted by learned counsel for the appellant that there is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant is languishing in jail since 04.04.2023 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. opposed the prayer for bail but could not dispute the aforesaid factual aspects of the matter.

Having regard to the facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, this Court is of the view that the appellant has made out a case for bail. The Court below erred in rejecting the bail application. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

Accordingly, the appeal is **allowed** and the impugned order rejecting the bail application of the appellant is set-aside.

Let the appellant, namely, **Arif** involved in the above Case be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

- (i) The appellant will not tamper with the evidence during the trial.
- (ii) The appellant will not pressurize/intimidate the prosecution witness.
- (iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.
- (iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- (v) 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.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 6.11.2023/AKT