

Court No. - 85

Case :- CRIMINAL APPEAL No. - 7874 of 2023

Appellant :- Sujit Kumar Maurya

Respondent :- State of U.P. and Another

Counsel for Appellant :- Mohd. Naushad Siddiqui, Bipin Kumar

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

In pursuance of the order dated 28.11.2023, Ashutosh, Circle Officer, Chakia, District Chandauli is present and filed a compliance affidavit stating that notice upon opposite party no.2 has been duly served on 30.11.2023, which is taken on record. The presence of C.O., Chakia, District Chandauli is exempted for future.

No one appears for the opposite party no.2 despite service of notice.

Heard learned counsel for the appellant, Sri A. K. Sand, Government Advocate as well as Sri S. K. Ojha, 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 anticipatory bail rejection order dated 01.07.2023 passed by learned Special Judge (SC/ST) Act, Chandauli in Anticipatory Bail Application No. 250 of 2023, arising out of Case Crime No. 46 of 2023, under Sections 366, 504, 506, 376, 120-B of I.P.C. and Section 67-A I. T. Act and Section 3 (2) (V) of SC/ST Act, Police Station Chakiya, District Chandauli.

As per the version of first information report, on 17.12.2022 at around 9 am, when the daughter of informant was going to her school, she was abducted by two persons on a motorcycle and was taken to the house of co-accused Vansh Narayan Dubey. She was gang raped by named accused Vans Narayan Dubey and two other persons. They made her indecent video and threatened her by addressing and abusing with caste related words that if she disclosed the incident to anyone, they would viral her indecent video.

It is submitted by the learned counsel for the appellant that appellant is innocent and he has been falsely implicated in the present case. It is further submitted that appellant is not named in the F.I.R. Victim in her statements recorded under Sections 161 and 164 Cr.P.C. did not disclose the name of appellant. It is further submitted that charge sheet came to be filed against named accused Vansh Narayan Dubey. It is further submitted that during trial victim did not corroborate the version of F.I.R. and therefore, the trial against accused Vansh Narayan Dubey ended into acquittal. Thereafter, since the investigation was pending against the present appellant and process of N.B.W. were issued against him, so he approached this court for anticipatory bail. It is further submitted that name of appellant was disclosed by co-accused Vansh Narayan Dubey. Except the confessional statement of co-accused Vansh Narayan Dubey, there is no evidence against the appellant

It is further submitted that F.I.R. was lodged after a delay of about one month but no explanation has been given. As per the medical report of the victim, simple injuries were found on her body. It is further submitted that in fact the house of the informant is nearby the land of the appellant and the cattle of informant repeatedly came to his field and destroyed his crops. When the appellant made oral complaint in this regard, he has been falsely implicated in the present case. The appellant is having no criminal history.

Per contra, learned A.G.A. vehemently opposed the prayer for anticipatory bail contending that independent witness Sanjay Kumar Jaiswal during his statement recorded under Section 161 Cr.P.C. stated that appellant confessed before him that he alongwith two other co-accused had committed gang rape with the prosecutrix and also created an indecent video of her through his mobile phone.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has not properly considered the case of the appellant. Hence, in view of above consideration, the order of rejection of anticipatory bail passed by the trial court dated 01.07.2023 is, hereby, set aside.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant and without expressing any opinion on the merits of the case, the appellant is entitled to be released on anticipatory bail in this case for the limited period considering the exception considered by the Hon'ble Supreme Court in the case of **Sushila**

Aggarwal Vs. State (NCT of Delhi) 2020 SCC Online SC 98.

In the even of arrest of the appellant **Sujit Kumar Maurya** shall be released on anticipatory bail till submission of charge sheet 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 Station House Officer of the police station 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 not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.
- (iv) The appellant shall make himself available for interrogation by a police officer as and when required.

In default of any of the conditions, the Investigating Officer/prosecution shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

Accordingly, the criminal appeal is **allowed**.

Order Date :- 1.12.2023/AKT