

Court No. - 85

Case :- CRIMINAL APPEAL No. - 7942 of 2023

Appellant :- Yar Mohammad

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ganesh Shanker Srivastava, Ashwini Kumar

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

1. Compliance affidavit filed today by learned A.G.A. is taken on record.
2. Heard learned counsel for the appellant, learned Additional Government Advocate for the State of U.P. and perused the record.
3. 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 bail rejection order dated 19.07.2023 passed by learned Special Judge (SC/ST Act)/Additional District & Session Judge, Siddharth Nagar in Bail Application No. 1141 of 2023 (Yar Mohammad Vs. State of U.P. and Another), arising out of Case Crime No. 0108 of 2023, under Sections- 363, 366, 506 I.P.C. and Sections- 3(2)(5) and 3(2)(5A) of SC/ST Act, Police Station- Mishrauliya, District- Sambhal.
4. As per prosecution case, there is allegation in the F.I.R. that the sister of the informant disappeared on 12.06.2023 and could not be traced despite best efforts. She had taken away Rs.50,000/- and jewellery with her. On 13.06.2023 at about 1:30 a.m., father of the informant got a call from a person stating that the victim was with him and he will perform marriage with her after converting her religion.
5. Learned counsel for the appellant contended that the appellant is innocent and has been falsely implicated in this case. Appellant is not named in the F.I.R. Name of the appellant was disclosed by the victim during her statement recorded under section 161 Cr.P.C., in which she stated to be of 18 years and accompanied with the appellant to Delhi on her own free will. During her statement under section 164 Cr.P.C., she reiterated her earlier statement.

Medical report does not indicate any sign of sexual assault by the appellant. As per ossification test, the victim's age was found above 19 years, therefore she was major. It is a case of malicious prosecution of appellants under the provisions of SC/ST Act. Lastly, it is submitted by learned counsel for the appellants that there is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant has one criminal history to his credit, which has been duly explained in para-14 of the affidavit. The appellant is languishing in jail since 24.06.2023 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. Hence, the appellant is entitled to be enlarged on bail.

6. Per contra, learned A.G.A. opposed the prayer for bail but could not dispute the factual and legal submissions urged by learned counsel for the appellant.

7. 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 appellants have 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.

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

9. Let **appellant- Yar Mohammad**, 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.

10. 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 :- 28.11.2023

Saif