

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9956 of 2023

Appellant :- Moti Lal Sahu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Saurabh Agarwal

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

Supplementary affidavit filed on behalf of appellant is taken on record.

As per office report, notice upon opposite party no.2 has been served personally but no one appears on her behalf.

Heard learned counsel for the appellant, 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 bail rejection order dated 20.07.2023 passed by learned Special Judge (SC/ST Act), Kaushambi in Bail Application No. 172 of 2023, arising out of Case Crime No. 48 of 2023, under Sections 376, 504, 506, 323 IPC & Sections 3 (2) 5 (Ka) & 3 (1) Dha of SC/ST (P.A.) Act, Police Station Kaushambi, District Kaushambi.

As per prosecution version, the first information report of this case was registered through an application moved under Section 156 (3) Cr.P.C. with the allegations that on 18.08.2020 at around 7 pm, when informant went to ease herself, she was caught by the appellant from behind. Thereafter, appellant took a country-made pistol from his son co-accused Neeraj Shahu, who was also present at the place of incident and committed rape with her on the point of that country-made pistol. Appellant threatened, abused and addressed her with caste related words.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. It is further submitted that incident is alleged to have taken place on 18.08.2020 while the application under Section 156 (3) Cr.P.C. was moved on 22.09.2020 after a delay of about one month of incident and no explanation was given for such delay. It is further

submitted that there are material contradictions in the statements of prosecutrix recorded under Sections 161 and 164 Cr.P.C. about factual aspects of the incident. It is also submitted that medical report of the prosecutrix does not corroborate the version of prosecution. It is further submitted that prosecutrix is 45 years of age having four children. It is further submitted that appellant and informant/prosecutrix are resident of same village and their relation are not cordial only because of the reason that the appellant has dispossessed the victim from his agricultural field which was cultivating by her on '*Adhiya Basis*' since long. It is further submitted that informant is habitual for lodging the F.I.R. and earlier to this incident, she has lodged F.I.R. against one Navi Ahmad bearing case crime nos. 37 of 2016 and 75 of 2018 and after some time, she made compromise with Navi Ahmad in both the cases after obtaining handsome amount. Criminal history of the appellant has been explained in para-2 of the supplementary affidavit filed in support of appeal. 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 04.07.2023 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, **Moti Lal Sahu** 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 :- 7.11.2023

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