

**Court No. - 85**

**Case :-** CRIMINAL APPEAL No. - 8788 of 2023

**Appellant :-** Azad Ansari

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Mohd Hamid, Juned Alam

**Counsel for Respondent :-** G.A., Akhilesh K. Dwivedi

**Hon'ble Mayank Kumar Jain, J.**

1. Heard learned counsel for the appellant, learned counsel for the informant, learned AGA for opposite party no.1 and perused the material placed on record.

2. 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 08.08.2023 passed by learned Additional Session Judge/Special Judge, SC/ST Act, Kushinagar at Padrauna, in Bail Application No. 2132 of 2023, arising out of case crime no. 196 of 2023, under Sections 323, 504, 506, 376, 457 of IPC, under Section 3(2)(v), 3(1)da & 3(1)dha of SC/ST Act, Police Station Turkpatti, District Kushinagar.

3. There is allegation in the FIR against the appellant that on 28.05.2023 at about 1:00 am, when the informant was sleeping with her children in her house the appellant entered in the house. The appellant forcibly committed rape with the informant. On raising alarm, the children of the informant woke up and tried to apprehend the appellant. The appellant fled away from there hurling caste related abuses. He had beaten the children of the informant.

4. Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. The victim and appellant is major. The victim was a consenting party. The victim was a married lady, she wanted to keep extra marital affair and to marry with the appellant, when the appellant denied for the same, the appellant is implicated in this case. It is also submitted that victim refused to undergo her medical examination, therefore, the allegation does not corroborate with any medical evidence. The F.I.R has been lodged after a delay of 22 days but no explanation is offered for the same. The children of the informant were not

medically examined since there is no medical report available on record. The appellant is languishing in jail since 06.06.2023 having no criminal history. In case, the appellant is released on bail, he will not misuse the liberty of bail.

5. Per contra, learned A.G.A. assisted by learned counsel for the informant have vehemently opposed the prayer for grant of bail to the appellant and submitted that husband of the victim resides at Saharanpur. When he came to his family then he came to know about the incident and then F.I.R was lodged, therefore, there is no delay in filing the F.I.R. The victim in her statement recorded under Sections 161 and 164 Cr.P.C consistently corroborated that appellant had committed rape with her. The children of the informant Abhishek aged 12 years and Ritesh aged 10 years are the eye witnesses and have supported the version of the F.I.R.

6. 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.

7. 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.

8. Accordingly, the criminal appeal is dismissed.

9. However, the trial court is directed to expedite the trial and to record the statements of the witnesses of fact within a period of three 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 :- 7.12.2023**

PS