

Court No. - 85

Case :- CRIMINAL APPEAL No. - 8771 of 2023

Appellant :- Divyansh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Vinay Singh, Atul Tej Kulshrestha

Counsel for Respondent :- G.A., Ajay Nand Pandey

Hon'ble Mayank Kumar Jain, J.

1. Heard learned counsel for the appellant, learned counsel for the informant, learned Additional Government Advocate for the State of U.P. and perused the 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 24.07.2023 whereby the Additional Sessions Judge/Special Judge, SC/ST Act, Baghpat in bail application No. 131 of 2023, arising out of case crime no. 96 of 2022, under Section 366, 302, 201 of IPC, and under Section 3(2)5 of SC/ST Act, Police Station Doghat, District Baghpat.

3. As per the F.I.R, there is an allegation that sister of the informant was enticed away by the appellant in the night of 11.04.2022. Age of the sister of the informant was 20 years.

4. Learned counsel for the appellant submits that appellant is innocent and has been falsely implicated in this case. Admittedly appellant was having love affair with the deceased and they wanted to marry with each other. Initially an F.I.R was lodged under Section 366 of I.P.C and Section 3(2) V of S.C/S.T Act, another F.I.R was lodged when unknown body of a female was recovered on 12.04.2022 and postmortem was conducted. In the postmortem report itself, the age of the deceased was noted as 35 years while the age of the sister of the informant was noted as 20 years in the F.I.R. It is further submitted that except confessional statement of the appellant, no evidence is available on record against him. Recovery of a watch is made from the pointing out of the co-accused Sonu who has already been granted bail by the co-ordinate Bench of this Court vide order dated 31.05.2023 passed in Criminal Appeal No. 4247 of 2023.. It is also submitted that F.I.R was lodged after a delay of 14 days and no explanation is offered

for such delay. It is also submitted that the appellant was not seen together by any of the person with the deceased before her death. The appellant is languishing in jail since 31.01.2023 having no criminal history 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.

5. Per contra, learned A.G.A. assisted by learned counsel for the informant vehemently opposed the prayer for bail and submitted that appellant was having love affair with the deceased and when deceased mount pressure upon the appellant to marry with her, the appellant along-with co-accused Sonu killed the sister of the informant.

6. 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.

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

8. Let appellant, **Divyansh**, 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 they are accused, or suspected, of the commission of which they are 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.

9. 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 :- 20.11.2023

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