

Court No. - 85

Case :- CRIMINAL APPEAL No. - 8934 of 2023

Appellant :- Nem Singh Alias Elu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Dharmendra Kumar Singh

Counsel for Respondent :- G.A., Radhey Shyam Yadav

Hon'ble Mayank Kumar Jain, J.

Counter affidavit filed on behalf of informant is taken on record.

Heard learned counsel for the appellant, Sri Radhey Shyam Yadav, learned counsel for the informant, 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 14.08.2023 passed by learned Special Judge (SC/ST Act), Farrukhabad in Bail Application No. 1744 of 2023, arising out of Case Crime No. 33 of 2023, under Sections 366, 376 IPC and 3 (2) V of SC/ST Act, Police Station Merapur, District Farrukhabad.

As per prosecution version on 20.01.2023 the daughter of informant was enticed away by the appellant with the assistance of other named persons. The daughter of the informant also took some ornaments with her.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. Victim in her statement recorded under Section 161 Cr.P.C. stated that she accompanied the appellant at her own accord and lived with him at Gurgaon and she categorically denied that appellant committed rape with her. In her statement recorded under Section 164 Cr.P.C., she admitted that she was having friendship with the appellant and she used to talk with him for the last 3 to 4 years. Medical report of the victim does not support the prosecution version. Victim was major at the time of incident and she was a consenting party. The appellant has one case criminal history which has been explained in para 27 of the 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 01.04.2023 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. assisted by learned counsel for the informant opposed the prayer for bail and submitted that victim in her statement recorded under Section 164 Cr.P.C. stated that appellant enticed and took her with him on the pretext of shopping and committed rape with her. Appellant has a criminal history of identical nature.

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, **Nem Singh @ Elu** 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 :- 16.10.2023

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