

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9021 of 2023

Appellant :- Beetu Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shyam Lal, Abhilasha Singh, Ashutosh Yadav

Counsel for Respondent :- G.A., Vipin Kumar

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, Sri Vipin Kumar, learned counsel for the informant/opposite party no.2, 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 17.07.2023 passed by learned Special Judge SC/ST (P.A.) Act, Etah in Bail Application No. 2090 of 2023, arising out of Case Crime No. 209 of 2023, under Sections 341, 354, 376-D of I.P.C. and 3 (2) (V) of SC/ST Act, Police Station Kotwali Nagar, District Etah.

As per the version of prosecution, appellant was running a Computer Training Center in which the victim was getting training. On 08.03.2023 at around 7.30 pm, he called the victim on the pretext to provide her a job. His companion who was not known by the victim, was also with him. Both the accused forcibly took her to Sahawar Road on their motorcycle and committed gang rape with her. They had also made her obscene video and abused her by addressing her caste related words. They threatened her that if she would disclose the incident to anyone, they would viral her obscene video.

It is submitted by the learned counsel for the appellant that appellant is innocent and he has been falsely implicated in the present case. The first information report was lodged after a delay of about 15 days. It is further submitted that prosecutrix was major at the time of incident. From the statement of the victim recorded under Section 161 Cr.P.C. it is clear that she was a consenting party. At the time of her medical examination she stated before the doctor that appellant had made attempt to rape her which is contrary to her statements recorded under Section 161 and 164 Cr.P.C. During her medical examination no sign of rape was observed on the person of the victim. No video recording whatsoever has been recovered by the Investigating Officer during investigation while the charge sheet has been filed. It is further submitted that neither any mobile phone has been recovered nor any call detail report was obtained by the Investigating Officer during investigation. The appellant is languishing in jail since 23.05.2023 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.

Per contra, learned A.G.A. assisted by learned counsel for the informant vehemently opposed the prayer for bail contending that appellant is named in the first information report. Victim in her statements recorded under Section 161 and 164 Cr.P.C. consistently stated that she was gang raped by the appellant and other co-accused . Hence, the appeal is liable to be dismissed.

During the arguments learned counsel for the appellant pointed out that in the order passed on 11.10.2023 in Criminal Appeal No. 8613 of 2023, it was wrongly argued by learned counsel for the informant that "*when victim came to know that her video was*

made viral by the appellant, she left her house and later on she committed suicide only for the reason that she felt insulted on the pretext of that video" while in the present case victim is alive.

Refuting the aforesaid argument, learned counsel for the informant submitted that no such argument advanced and it appears that inadvertently this line has been transcribed in the order dated 11.10.2023 as the same are not relevant in reference to the present 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,, I do not find it fit case for bail.

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.

Accordingly, the criminal appeal is **dismissed**.

However, learned trial court is directed to expedite the trial and record the statement of victim preferably within a period of three months from the date of presentation of the certified copy of this order.

Order Date :- 12.12.202/AKT