

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9197 of 2023

Appellant :- Rajendra Vishwakarma @ Shyamu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Kamlesh Prasad, Buddhi Prakash

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

1. Learned A.G.A informed that service on opposite party no. 2 is sufficient as per record available with him.
2. Heard learned counsel for the appellant, learned Additional Government Advocate for the State of U.P. and perused the record.
3. This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellants with the prayer to set aside the bail rejection order dated 28.08.2023 passed by learned Special Judge (SC/ST Act), Allahabad in Case Crime No. 241 of 2023, under Sections 376, 452, 323, 504, 506 IPC and Section 3(2)V of SC/ST Act, Police Station Phoolpur, District Allahabad.
4. As per FIR, the case of prosecution is that on 01.07.2023 at around 1.00 pm, when the informant was alone inside her house the appellant entered into her house and committed rape with her, on raising alarm the appellant fled away from there. When a complaint was made by the husband of the informant to the brother of the appellant then his brother mount pressure for compromise and addressed with caste related words.
5. Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case due to village party bandi. He further submits that victim in her statement recorded under Section 161 Cr.P.C stated that it was her second marriage with her husband. It is also submitted that victim refused to undergo for her medical examination. It is also submitted that alleged incident is said to have taken on 01.07.2023 but the F.I.R was lodged after a delay of six days on 06.07.2023 and no plausible explanation is given for the delay. It is further submitted that victim entered into compromise with the appellant in presence of several persons including gram pradhan which bears their

signatures also. 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 12.07.2023 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.

6. Per contra, learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid factual aspects of the matter.

7. 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.

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

9. Let appellant, **Rajendra Vishwakarma @ Shyamu**, involved in the above Case be released on bail on furnishing a personal bond and two local and heavy 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.

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 :- 12.10.2023

PS