

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9242 of 2023

Appellant :- Bablu Rajbhar

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sanjay Kumar Yadav

Counsel for Respondent :- G.A., Kamal Kumar Singh

Hon'ble Mayank Kumar Jain, J.

1. List revised.
2. 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.
3. 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 27.07.2023 passed by learned Special Judge SC/ST (Prevention of Atrocities Act)/Additional Sessions Judge, Ballia in Bail Application No. 3503 of 2023, arising out of Case Crime No.303 of 2023, under Sections 376 IPC and Sections 3 (2) (5) of SC/ST (Prevention of Atrocities) Act, Police Station Jahanaganj, District Azamgarh.
4. As per the prosecution version in the F.I.R. is that on 04.07.2023 at about 11:00 p.m., when the informant was alone, the appellant entered into the house of the informant and committed rape with her.
5. Learned counsel for the appellant submitted that the appellant is innocent and he has been falsely implicated in this case. It is next submitted that the age of the victim is 35 years and she is a major lady and during her examination, no internal or external injury has been found on her body. It is further submitted that during her statement under Section 164 Cr.P.C., she has specifically stated that she lodged F.I.R. against the present appellant only due to instigation of the villagers. It is further submitted that no such offence was committed by present appellant as alleged in the F.I.R. 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 09.07.2023 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.

6. Per contra, learned A.G.A. and learned counsel for the informant have opposed the prayer for bail and submitted that on earlier occasion, the application was moved by the husband of the informant before S.S.P., Azamgarh in which S.H.O. of the police station concerned was directed to produce the prosecutrix before the court. Now a report is submitted before the S.H.O. by way of compliance affidavit which indicates that no subsequent statement under Section 164 Cr.P.C. was recorded .

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 the appellant, namely, **Bablu Rajbhar** 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.

10. 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 :- 18.10.2023

Shivangi