

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9253 of 2023

Appellant :- Kallu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sharad Saran Srivastava

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

Compliance affidavit filed by learned A.G.A. is taken on record.

As per office report, notice upon the informant has been served personally but no one appears on her behalf.

Heard learned counsel for the appellant, 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 28.08.2023 passed by learned Special Judge SC/ST (P.A.) Act, Fatehpur in Bail Application No. 1696 of 2023, arising out of Case Crime No. 25 of 2018, under Sections 376-D IPC and Section 3 (2) 5 of SC/ST Act, Police Station Khaga, District Fatehpur.

Learned counsel for the appellant argued that the appellant has been falsely implicated in this case. The appellant claims to have cooperated in the investigation; the appellant has no criminal history; the appellant has been summoned upon protest petition; on prima facie basis, for the purpose of grant of bail, it has been submitted, though the FIR allegations exist, at the same time, despite lapse of long time, the victim never got herself examined under Section 164 Cr.P.C. Also, her statement could not be recorded under Section 161 Cr.P.C. on account of non-cooperation by informant's family. The victim is stated to be of 19 years of age. There is no injury report. Also, it has been submitted, the allegations of violation of SC/ST Act are general and made to lend colour to the story. 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. It is further submitted that similarly placed co-accused Budhraj @ Shivsharan has already been granted bail by the co-ordinate Bench of this court vide order dated 23.12.2021 passed in Criminal Appeal No. 5798 of 2021. The appellant is languishing in

jail since 25.07.2023 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.

Per contra, learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid factual aspects of the 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, 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, **Kallu** 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 :- 12.10.2023/AKT