

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9477 of 2023

Appellant :- Anees Chauhan

Respondent :- State Of U.P. And Another

Counsel for Appellant :- Manvendra Nath Singh

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

Hon'ble Mayank Kumar Jain,J.

Heard learned counsel for the appellant, learned AGA for opposite party no.1, learned counsel for the opposite party no. 2 and perused the material placed on record.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to set aside the impugned order dated 25.08.2023 whereby the Special Judge, SC/ST Act, Mau has rejected the bail application of the appellant moved by him in Case Crime No. 0277 of 2023, under Sections 363, 366 of IPC and under Section 3(2) V of SC/ST Act, Police Station Kotwali, District Mau.

As per the FIR, the case of the prosecution is that the appellant goes to roam around the house of the informant. The informant made a complaint to the father of the appellant about this on 03.08.2023. The victim was sleeping in her house at around 5:00 a.m.; she found that his daughter was not there. The appellant had taken her daughter with him.

Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that victim and the appellant were studying in the same class. It is also submitted that during her statement recorded under Section 161 Cr.P.C the victim stated that she accompanied with the appellant at her accord and they went to Varanasi then to Bareilly. Thereafter she travelled to Mau in a bus with the appellant. It is also submitted that during medical examination no injury were noted on the person of the victim. During her statement recorded under Section 164 the victim reiterated her earlier statement. The victim was medically examined for age determination and her radiological age is 16 to 18 years. In this respect, the law is settled that the margin of error in ascertaining the age by radiological examination is two years on either side and hence the possibility of the prosecutrix being major cannot be ruled out. The appellant is languishing in jail since 08.08.2023 having no criminal history. In case, the appellant is released on bail, he will not misuse the

liberty of bail.

Per contra, learned A.G.A. assisted by learned counsel for the informant vehemently 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, **Anees Chauhan** 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

Gaurav