

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9707 of 2023

Appellant :- Jubair @ Sameer

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ajay Kumar Srivastava

Counsel for Respondent :- G.A., Kailash Nath

Hon'ble Mayank Kumar Jain, J.

Rejoinder affidavit filed on behalf of appellant is taken on record.

Heard learned counsel for the appellant, Sri Kailash Nath, 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 18.07.2023 passed by learned Special Judge (SC/ST Act)/Additional Sessions Judge, Ghaziabad in Bail Application No.4933 of 2023, arising out of Case Crime No. 405 of 2023, under Sections 354, 354A, 376, 406, 323, 504, 506 IPC and Section 3 (2) (V) of SC/ST Act, Police Station Nandgram, District Ghaziabad.

As per F.I.R. version victim is a deserted lady having a son of 12 years. One day appellant met with the victim and promised to help her. Appellant called the informant in a hotel and touched her inappropriately and established forceful physical relation with her. Appellant also created an indecent video and on the pretext of that video threatened her several times. The appellant had taken Rs. 50,000/- for two times from the informant. When informant got pregnant, appellant administered her some medicine as a result of it the pregnancy of informant was terminated. Appellant has also beaten the informant. On 13.03.2023, appellant gave Rs.10,000/- to the informant and entered into a compromise but the terms of the compromise were not followed by the appellant.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. During her statement recorded under Section 161 Cr.P.C., the informant stated that his counsel namely Vikas Sharma prepared her tehrir but true facts were not mentioned in it. It is further submitted that

first informant is a married lady aged around 33 years. It is further submitted that informant herself refused to undergo for her internal and external examination. It is further submitted that during her statement recorded under Section 164 Cr.P.C., victim stated that she was having relationship with the appellant and she met the appellant more than two times and established physical relation with him. It is further submitted that informant was a consenting party. It is further submitted that there is no evidence with respect to termination of pregnancy was produced by the informant. The appellant does not have any criminal history to his credit. 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 23.06.2023 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. assisted by learned counsel for the informant opposed the prayer for bail and contended that appellant had taken Rs. 1 lakh from the informant and returned only Rs. 10,000/- to her just to avoid the legal proceedings and entered into a compromise but it does not adversely effect the averment made in the F.I.R.

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, **Jubair @ Sameer** 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 :- 30.11.2023

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