

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9672 of 2023

Appellant :- Malik @ Sonu @ Aleek Khan

Respondent :- State of U.P. and Another

Counsel for Appellant :- Pradeep Kumar Pal

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

List revised.

As per office report notice upon the informant/opposite party no. 2 has been personally served 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 07.08.2023 passed by learned Special Judge SC/ST (P.A.) Act, Kanpur Nagar in Bail Application No. 2727 of 2023, arising out of Case Crime No. 430 of 2023, under Sections 452, 376, 323, 504, 389 IPC and Sections 3 (2) 5, 3 (2) 5 Ka, 3 (1) (Da) and (Dha) of SC/ST Act, Police Station Chakeri, District Kanpur Nagar.

As per prosecution version on 03.09.2022 at around 1.30 pm, co-accused Om Shukla forcibly entered into the house of informant and committed rape with her. An obscene video was also made by Om Shukla. On the pretext of that obscene video, he used to blackmail her and commit rape with her several times. On 19.04.2023, Om Shukla again committed rape with her. When appellant came to know about the incident and aforesaid video, on 21.04.2023, he gave threat to the informant and committed rape with her. On 23.04.2023, she narrated the entire incident to her husband. When her husband asked about the aforesaid video with Om Shukla, he called her husband to meet at Kesa House Hazari. When she alongwith her husband reached there, the appellant and other co-accused who were ambushed there had beaten them by wooden stick as well as kick and fists and also addressed with caste related words.

Learned counsel for the appellant argued that the appellant has been falsely implicated in this case. It is further submitted that victim is a married lady aged around 38 years and she is having illicit relation with main accused Om Shukla and one day when the appellant saw the Om Shukla entering into her house, she has falsely implicated the appellant in the present case in order to save her. During her medical examination no sign of rape was observed. It is also submitted that no obscene video was recovered by the Investigating officer during investigation. When Investigating Officer checked the mobile of appellant in which no such obscene video was found. 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 10.07.2023 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 and submitted that in the F.S.L. report human blood was found. However, he 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, **Malik @ Sonu @ Aleek Khan** 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 :- 19.10.2023

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