

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9678 of 2023

Appellant :- Rahul Singh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Pradeep Kumar Pal

Counsel for Respondent :- G.A., Praveen Kumar Pal

Hon'ble Mayank Kumar Jain, J.

1. Counter affidavit filed today by learned counsel for the informant is taken on record.
2. Heard learned counsel for the appellant, learned counsel for the informant, learned AGA for opposite party no.1 and perused the material placed on record.
3. 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 11.08.2023 whereby the Special Judge, SC/ST Act, Kanpur Nagar in Bail Application No. 2708 of 2023, arising out of case crime no. 281 of 2023, under Sections 328, 504, 376, 506 of IPC, and under Section 3(2)(v), 3(1)(Da)(Dha) of SC/ST Act, Police Station Panki, District Kanpur Nagar.
4. There is an allegation in the F.I.R against the appellant that informant is a married lady having children. In the year 2019, she was introduced with the appellant. The appellant made promise to her to provide a job and Rs. 4000/- were transferred through on-line mode in the account of the appellant. In the meantime, the appellant and informant developed intimate relations. On 10.01.2023, the appellant on the pretext of celebrating his birthday administered some substance in the tea and informant become unconscious, appellant committed rape with her. When the informant asked that she would make a complaint the appellant threatened that he would circulate her video, thereafter, the appellant continue to establish physical relations with the informant. The appellant had taken the informant to the OYO hotel. On 22.05.2023 and thereafter, last time in the month of May he establish physical relation with her.

5. Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. The age of the victim is 30 years, she is a married lady and was having consensual relationship with the appellant. During investigation no such video as alleged by the informant was recovered by the investigating officer. There was financial dispute between the appellant and the informant and she continues to establish physical relation with the appellant on her own sweet will. During medical examination no sign of physical assault was noted. No evidence is brought on record that Rs. 4000/- was transferred to the account of the appellant. The appellant never received any money from the prosecutrix. Appellant is languishing in jail since 13.07.2023 having no criminal history. In case, the appellant is released on bail, he will not misuse the liberty of bail.

6. Per contra, learned A.G.A. assisted by the learned counsel for the respondent have supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant and submitted that the appellant had taken Rs. 4000/- through on-line mode and amount in cash also. The appellant is an unmarried person while it is mentioned in the bail application that he is a married lady. The victim during her statement under Section 161 Cr.P.C corroborated the version of the F.I.R.

7. It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has not properly considered the case of the appellant. Hence, in view of above consideration, the impugned order of rejection of bail passed by the trial court is, hereby, set aside.

8. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court is of the opinion that the appellant is entitled to be enlarged on bail.

9. Let appellant, **Rahul Singh** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) 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.

(ii) The appellant shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

11. The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the appellant, if there is no other legal impediment.

12. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

13. The criminal appeal is allowed.

Order Date :- 22.11.2023

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