

Court No. - 85

Case :- CRIMINAL APPEAL No. - 9588 of 2023

Appellant :- Shyamu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Abhishe Pandey, Praveen Singh

Counsel for Respondent :- G.A., Chandra Bhushan Prasad

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, learned Additional Government Advocate representing the State.

This appeal under Section 14-A(2) of the scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant with the prayer to set aside the impugned judgement and order dated 10.01.2022 passed by the Special Judge, SC/ST Act, Muzaffar Nagar by which the bail of the appellant has been rejected in Bail Application No. 5244 of 2021, arising out of Case Crime No. 357 of 2021, under Sections 366, 376D, 506 IPC and 3(2)V of SC/ST Act, police station Bhopa, district Muzaffar Nagar and enlarge the appellant on bail during the pendency of trial.

In short compass, the facts of the case as unfolded by the prosecution are that the informant, who is the father of the victim lodged FIR on 02.11.2021 with regard to the alleged incident dated 28.10.2021 against Gaurav (appellant) and co-accused Shyamu alleging inter alia that in the night of 28.10.2021, his daughter was enticed away by the appellant and co-accused.

Referring to the statement of the victim under Section 164 Cr.P.C., it is argued by learned counsel for the appellant that the appellant has been falsely implicated in this case. It is pointed out that though the victim has made allegation of rape on 28.10.2021 against the appellant and co-accused Gaurav, but she has also stated that after the said incident she was brought back by her parents to her house. On the strength of statement of the victim, it is submitted that on 28.10.2021 victim along with the informant came to her house, but first information report was lodged on 02.11.2021 mentioning that she has been enticed away by the appellant and co-accused and her whereabouts are not known. Later on, police shown the recovery of the victim on 03.11.2021,

which is a false recovery in the light of the statement of the victim under Section 164 Cr.P.C. Apart from this, it is also submitted that the victim is major aged about 18-19 years. Referring to the medical examination report dated 03.11.2021, it is pointed out that no fresh external injury was found on the body or private parts of the victim, as such the medical report is not corroborated by the prosecution case. It is further submitted that co-accused Gaurav has already been enlarged on bail by this Court vide order dated 10.10.2022 in Criminal Appeal No. 1419 of 2022. He further submits that since the role of the appellant is identical to that of the co-accused who has already been enlarged on bail, they are also entitled to be enlarged on bail on ground of parity. Lastly, it is submitted that due to heavy docket, there is no hope of early conclusion of the trial of the appellant in near future. There is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant does not have any criminal history and is languishing in jail since 05.1.2022 and in case, the appellant is released on bail, he will not misuse the liberty of bail and cooperate with the trial.

Per contra, learned A.G.A. for the State opposed the prayer for bail of the appellant, but did not dispute the factum of the case as argued on behalf of the appellant.

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 appellant-**Shyamu**, 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 appellants will not tamper with the evidence during the trial.

(ii) The appellants will not pressurize/intimidate the prosecution

witness.

(iii) The appellants will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

(v) The appellants 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 :- 7.11.2023

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