

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10272 of 2023

Appellant :- Shivkant Tiwari @ Raju Tiwari And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Avdhesh Narayan Tiwari, Sarvesh Kumar Dubey

Counsel for Respondent :- G.A., Akshay Raj Singh, Deepak Dubey

Hon'ble Mayank Kumar Jain, J.

1. Heard learned counsel for the appellants, learned AGA for opposite party no.1 and learned counsel for the informant and perused the material placed on record.
2. 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 18.09.2023 whereby the Special Judge, SC/ST Act, Jalaun has rejected the bail application of the appellant moved by them in Complaint Case No.83 of 2022, under Sections 376D, 323, 504, 506 of IPC, and Section 3(2)V of SC/ST Act, Police Station Madhogarh, District Jalaun.
3. The informant filed a complaint stating an incident dated 18.09.2022 at around 6.00 pm that she was keeping her filed. Appellants with other co-accused were already ambushed. They thrown the complainant on the filed and forcibly committed rape with her. On making protest appellants addressed the informant with caste related abuses. On raising alarm witnesses Shivam Gurjar and Lavveer came there. the appellants fled away from the place of occurrence making threat of life to informant and her children.
4. Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. The incident is shown to have taken place on 18.09.2022 while the complaint has been lodged on 11.10.2022 and no explanation of delay has been given by the complainant.
5. It is further submitted that the place of occurrence as mentioned in the complaint is not corroborated by the complainant and her

witnesses during their statement recorded before the Court under Section 200 and 202 Cr.P.C. respectively. In complaint, the place of occurrence is mentioned as the field of complainant while during her statement under Section 200 Cr.P.C. the complainant stated that appellants along with other accused took her to a Bajra field. The witness Lavver Singh and Shivam Gurjar have stated during their statement under Section 202 Cr.P.C. the place of occurrence to be the field of the complainant.

6. It is further submitted that an FIR was lodged by one Prajul against appellants Raj Pachauri having Crime No.73/2021. The father of the appellant Raj Pachauri was murdered and an FIR was lodged having Crime No.94/2017 by the appellant Raj Pachauri in which Sandeep was not witness. Another FIR having Crime No.155/2021 was lodged in which Pranjul who is the informant of the FIR relating to Crime No.73/2021 was made accused. This FIR was lodged on the basis of the crime committed by named persons in connection with the murder of the father of the appellant Raj Pachauri. An application under Section 156(3) Cr.P.C. was moved by Brajesh Singh Bhadauriya against witness Sandeep Singh and appellant Raj Pachauri. The informant Brajesh Singh Bhadauriya is the accused in the murder case of the father of appellant Raj Pachauri. In another FIR having Crime No.21/2023 the name of the appellant Raj Pachauri was disclosed during investigation. This FIR was lodged by one Shivnandan. A complaint numbered as 19/2023 was filed by Raghvendra Rathore against appellant Raj Pachauri and witness Sandeep in which Charit son of Rajeev was made witness, who is the accused in the FIR under Section 307 of IPC.

7. Learned counsel for the appellant vehemently argued that the place of occurrence in this incident is changed as per the statement of the complainant and the witnesses. The allegation of gang rape is not supported with any medical examination. The alleged incident appears to have taken place in open field but there is no eye witness of such incident and no alarm was made by the complainant. Complainant is a married lady aged about 36 years. The criminal history of the appellant Raj Pachauri relating to the cases which are mentioned during argument is also brought on record. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellants are languishing in jail since 28.08.2023. In case, the appellants are released on bail, they will not misuse the liberty of bail.

8. Per contra, learned A.G.A. assisted by learned counsel for the informant has supported the order passed by the Sessions court and

vehemently opposed the prayer for grant of bail to the appellants and submits that in different FIRs and complaint cases the complainant or her husband is either not an accused or a witness. The witness of the incident Shivam Gurjar son of Udaibhan is different with person Shivam Gurjar who is referred by the learned counsel for the appellants. It is submitted that place of occurrence is same because at the time of incident as per the season the crop of 'Bajra' was standing in the field of the informant. The motive behind the incident is also narrated by the complainant in her complaint that appellants asked the complainant to guard their fields but she refused. Therefore, appellants were having enmity with the complainant.

9. It is also submitted that so far as the delay in filing the application under Section 156(3) Cr.P.C. is concerned, the informant went police station to lodge her report and also had given application to Superintendent of Police, Jalaun at Orai but no action was taken therefore, the complaint was filed, Hence, the delay is explained. The eye witnesses have supported the version of the complaint during their deposition before the Court as witness under Section 202 Cr.P.C. as well as the complainant have also corroborated the version of the complaint.

10. It is further submitted that an application was given by the complainant before the court concerned that appellants are threatening her and are pressing her to withdraw her complaint. Other accused Shivam Pachauri and Sandeep are still absconding and process of Section 82 and 83 Cr.P.C. has already been issued against them.

11. In rebuttal, learned counsel for the appellants submitted that this is not the case of the appellants as the present case has been filed as a counterblast in which the connectivity with the murder case of the father of the appellant has been demonstrated before the Court. It is also submitted that proceedings are pending under a complaint and appellants have nothing to do with other co-accused who were absconding. In absence of other accused the trial could not proceed and they are languishing in jail since 28.08.2023.

12. 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 appellants. Hence, in view of above consideration, the order of rejection of bail passed by the trial court dated 18.09.2023 is, hereby, set aside.

13. Having considered the submissions of the parties noted above,

finding force in the submissions made by the learned counsel for the appellants; 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.

14. Let appellants, **Shivkant Tiwari @ Raju Tiwari and Raj Pachauri** be released on bail in the aforesaid case crime number on their 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 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.

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

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

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

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

15. 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 appellants 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.

16. 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.

17. 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.

18. The criminal appeal is allowed.

Order Date :- 23.11.2023

Mohit