

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10331 of 2023

Appellant :- Manish Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Awadhesh Kumar Malviya

Counsel for Respondent :- G.A., Ashok Kumar

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, learned counsel for the respondent, 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 22.08.2023 passed by learned Special Judge (SC/ST Act), Ghazipur in Bail Application No. 2004 of 2023, arising out of Case Crime No. 167 of 2023, under Section 376D I.P.C., Section 3(1) Ba (1) of SC/ST Act, Police Station Mohammadabad, District Ghazipur.

There is an allegation in the F.I.R that co-accused Kamlesh Yadav was having cordial relation with the informant and use to establish physical relation on the pretext of marriage. On 24.07.2023 at around 12:00 in the night Kamlesh Yadav called the victim and asked her to accompany with him to perform marriage. The present appellant who is cousin of the appellant also accompanied and establish physical relation with her and also threatened her.

Learned counsel for appellant has submitted that the appellant is innocent and have been falsely implicated in this case. It is further submitted that the victim in her statement recorded under Sections 161 and 164 Cr.P.C categorically denied that appellant established physical relation with her. The only allegation against the appellant is that he met with the informant/prosecutrix on 24.07.2023 after 12:00 am. Allegation of rape is levelled against co-accused Kamlesh Yadav. There are material contradictions in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. The age of the prosecutrix is 18 years and she is a major lady. Criminal history of the appellant has been explained in the rejoinder affidavit. The appellant is languishing in jail since

06.08.2023 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 respondent vehemently opposed the prayer for bail and submitted that the appellant is named in the F.I.R and there are allegation of committing rape with the prosecutrix but could not dispute that the victim during her statement under Sections 161 and 164 Cr.P.C categorically denied that the appellant established physical relation with her.

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 order of rejection of bail passed by the trial court is, hereby, set aside.

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.

Let appellant, **Manish Yadav** 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.

(vii) The appellant shall, after release from the jail pay Rs. 1.5 lacs through a demand draft to the informant before the court concerned failing which the trial court would be at liberty to cancel the bail of the appellant.

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.

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.

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.

The criminal appeal is allowed.

Order Date :- 29.11.2023

PS