

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10587 of 2023

Appellant :- Mohammad Azam

Respondent :- State of U.P. and Another

Counsel for Appellant :- Arun Kumar Pandey

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

Hon'ble Mayank Kumar Jain,J.

1. Heard learned counsel for the appellant, learned AGA for the State 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 29.09.2023, whereby the Special Judge, SC/ST Act/Additional Sessions Judge, Fatehpur has rejected the bail application of the appellant moved by him in Case Crime No. 137 of 2023, under Sections 376, 504, 506 of IPC and Section 3(2)V SC/ST Act, Police Station Sultanpur Ghosh, District Fatehpur.

3. There is allegation against the appellant that he was used to chase informant frequently. On 27.07.2023 at around 11.00 pm when she went to ease herself the appellant put pistol on her and committed rape with her. The informant was also threatened and was abused by the appellant. The informant returned to her house and informed about the incident to her parents.

4. Learned counsel for the appellants has submitted that appellant is innocent and has been falsely implicated in this case. During her statement under Section 161 Cr.P.C. the victim has admitted that she was in conversation with the appellant since last six months and she was knowing the appellant very well. The medical report does not corroborate the version of rape committed by appellant. There is no FSL report available on record. No recovery of any country made pistol is made from the possession of the appellant. It is submitted that there are material contradiction in the statements of prosecutrix recorded under Section 161 and 164 Cr.P.C. The parents of the victim are not eye witnesses according to the informant. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellant is languishing in jail since

29.07.2023 having no criminal history. In case, the appellant is released on bail, he will not misuse the liberty of bail.

5. 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 appellant and argued that there was no reason with the informant to implicate falsely to the appellant. The victim during her statement under Section 161 and 164 Cr.P.C. has consistently corroborated that appellant has committed rape with her. Two eye witnesses namely Kamlesh and Ramkishan who happens to be the parents of the informant, had seen the incident.

6. It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has properly considered the case of the appellant. Hence, in view of above consideration, the order of rejection of bail passed by the trial court dated 29.09.2023 is affirmed.

7. Having considered the submissions of the parties noted above, finding no force in the submissions made by the learned counsel for the appellant; without expressing any opinion on the merits of the case, the Court is of the opinion that the appellant is not entitled to be enlarged on bail and the appeal deserves to be dismissed.

8. The criminal appeal is dismissed.

9. However, the trial court is directed to record the statement of victim within three months from the date of production of certified copy of this order.

10. 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.

Order Date :- 2.12.2023

Mohit