

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10612 of 2023

Appellant :- Rahul @ Shyamu Thapa

Respondent :- State of U.P. and Another

Counsel for Appellant :- Kuldeep Kumar

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

1. Heard learned counsel for the applicant as well as learned Additional Government Advocate for the State of U.P. and perused the record.

2. This criminal appeal under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellants with the prayer to set aside the impugned judgment and order dated 23.06.2023 passed by learned Special Judge (SC/ST Act), Bulandshahr, arising out of Case Crime No. 549 of 2022, under Sections 366, 368, 370, 376, 120-B I.P.C., Section 3(2)(V) of SC/ST Act, Police Station Sikandrabad, District Bulandshahr.

3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present crime. Appellant is not named in the F.I.R, his name was disclosed by the victim for the time during her statement recorded under Section 164 Cr.P.C. He further submits that the FIR has been lodged belatedly without there being any plausible explanation. He further submits that there are apparent contradictions in the statements of the witnesses as well as the victim. He further submits that no independent witness of the alleged abduction of the victim was there. The victim has not been recovered from the custody of the applicant or from a place belonging to the applicant. It is further submitted that main accused (named in F.I.R) Rijwan alias Rehan and Indu Sharma have already been released on bail vide order dated 31.07.2023 and 23.09.2022 passed in Criminal Misc. Bail Application Nos. 56532 of 2022 and 41659 of 2022 respectively. He further submits that since the role of the appellant is identical to that of the co-accused who have already been enlarged on bail, he is also entitled to be enlarged on bail on ground of parity. Lastly, it is submitted by learned counsel for the appellant that there is no chance of the appellant fleeing away from the judicial

process or tampering with the prosecution evidence. The appellant is languishing in jail since 02.06.2023 having no criminal history 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.

4. Learned A.G.A. has, however, opposed the prayer for grant of bail.

5. Per contra, learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid factual aspects of the matter.

7. 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.

8. Accordingly, the appeal is allowed and the impugned order rejecting the bail application of the appellant is set-aside.

9. Let appellant, **Rahul @ Shyamu Thapa**, involved in the above Case be released on bail on furnishing a personal bond and two local and heavy 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 appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/intimidate the prosecution witness.

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

(iv) The appellant 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 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.

10. 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 :- 24.11.2023
PS