

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10572 of 2023

Appellant :- Brijmohan And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Hari Bans Singh, Yusuf Ali

Counsel for Respondent :- G.A., Vikas Yadav

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, learned counsel for the informant, 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 appellants with the prayer to set aside impugned order dated 05.08.2023 passed by learned Special Judge (SC/ST Act), Deoria in Bail Application No. 1503 of 2023, arising out of Case Crime No. 201 of 2023, under Sections 376D IPC and Section 3 (2) (V) of SC/ST Act, Police Station Rampur Karkhana, District Deoria.

Learned counsel for the appellant argued that the appellants are innocent and he has been falsely implicated in this case due to previous enmity. It is further submitted that there is delay of about 5 days in lodging the F.I.R. and no explanation has been given in this respect. It is further submitted that there are material contradictions in the version of F.I.R. as well as statements of the victim recorded under Section 161 and 164 Cr.P.C. It is further submitted that victim was medically examined before the District Hospital Deoria but no any injury about sexual assault was noted. It is further submitted that co-accused Vindhyachal, Dharmendra Chauhan against whom there was allegation of gang rape with the victim, have already been granted bail by the co-ordinate Bench of this Court vide order dated 06.11.2023 and 17.11.2023 passed in Criminal Misc. Bail Application No. 42106 of 2023 and Criminal Appeal No. 9346 of 2023 respectively. The appellants does not have any criminal history to his credit. Lastly, it is submitted by learned counsel for the appellants that there is no chance of the appellants fleeing away from the judicial process or tampering with the prosecution evidence. The appellants are languishing in jail since 01.06.2023 and in case he is released on bail, they 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 informant opposed the prayer for bail by contending that there is serious allegation against the appellants that they committed rape with a helpless girl.

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 the appellants, namely, **Brijmohan and Jairam** 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 he is accused, or suspected, of the commission of which he is 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 :- 7.12.2023/PS