

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10626 of 2023

Appellant :- Dheersen Nishad

Respondent :- State of U.P. and Another

Counsel for Appellant :- Gaurav Kumar Shukla, Vikas Yadav

Counsel for Respondent :- G.A., Raman Pandey, Shreyanshi Singh

With

Case :- CRIMINAL APPEAL No. - 10638 of 2023

Appellant :- Mayaram Pathak

Respondent :- State of U.P. and Another

Counsel for Appellant :- Gaurav Kumar Shukla, Rajesh Yadav, Ruchi Mishra, Vikas Yadav

Counsel for Respondent :- G.A., Raman Pandey, Shreyanshi Singh, Shrikant Dubey

Hon'ble Mayank Kumar Jain, J.

Sri Ganesh Shanker Srivastava, Advocate has filed his Vaklatnama on behalf of opposite party no.2/informant, which is taken on record.

Since both the aforesaid appeals arise out of same case crime number, therefore are being heard and decided together.

Heard learned counsel for the appellants, Sri Ganesh Shanker Srivastava, learned counsel for the opposite party no.2/informant, learned Additional Government Advocate for the State of U.P. and perused the record.

These criminal appeals under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act have been preferred by the appellants namely Dheersen Nishad and Mayaram Pathak with the prayer to set aside the bail rejection orders dated 10.10.2023 and 11.10.2023 passed by learned Special Judge (SC/ST) Act, Basti in Bail Application Nos. 1872 of 2023 and 1918 of 2023, arising out of Case Crime No. 201 of 2023, under Sections 376, 120B of IPC and Section 3 (2) (v) of SC/ST Act, Police Station Raudhali, District Basti.

As per prosecution version, the informant was in search of a job. Appellant Maya Pathak advised her to meet another appellant

Dheersen Nishad assuring that he will provide a job to her. In the Month of May, 2021, informant met with the appellant Dheersen Nishad, the then Chairman of Municipality. He on the pretext of false promise to provide her a job, continuously committed rape with her. In the month of August, 2022, appellant Dheersen Nishad provided her a job of Sweeper. Even thereafter, she was physically harassed by him. When she got pregnant, she was compelled to administer the medicine for her abortion.

Learned counsel for the appellants argued that the appellants are innocent and they have been falsely implicated in this case. It is further submitted that no date and time of the incident is mentioned in the F.I.R. It is further submitted that prosecutrix is a major and married lady aged around 40 years having two children working as Sweeper in Nagar Panchayat, Rudhauri. Prosecutrix initially herself refused to undergo for her internal medical examination. Since prosecutrix is a careless lady and did not perform her duties properly, therefore, several complaints have been received against her in the office. Appellant Dheersen Nishad being Chairman of Nagar Panchayat ordered to initiate enquiry against her in the aforesaid complaints, therefore, in order to harass the appellant Dheersen, she lodged the false present F.I.R. It is further submitted that there are material contradictions in the statement of the prosecutrix and version of the F.I.R. about the month of the year 2021 since in the F.I.R. it is mentioned that informant met with the appellant Dheersen in the month of May 2021 while in the F.I.R. as well as in her statement recorded under Section 161 Cr.P.C., she stated that she met with appellant Dheersen Nishad in the month of April, 2021. During her statement recorded under Section 161 Cr.P.C., prosecutrix stated that after the year 2021, appellant Dheersen. 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. So far as criminal history of appellant Dheersen Nishad is concerned, same has been explained in para-30,31 and 32 of the affidavit filed in support of appeal. Appellant Mayaram Pathak has no previous criminal history. The appellants Dheersen Nishad and Mayaram Pathak are languishing in jail since 31.08.2023 and 16.09.2023 respectively in case they are 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 aforesaid prayer. However, they could not dispute the aforesaid factual aspects of the matter.

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 appellants have made out a case for bail. The Court below erred in rejecting the bail applications. The impugned orders suffers from infirmity and illegality and the same are liable to be set-aside and the appeals are liable to be allowed.

Accordingly, the appeals are **allowed** and the impugned order rejecting the bail application of the appellant is set-aside.

Let the appellants, namely, **Dheersen Nishad** and **Mayaram Pathak** 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 are exempted.

(iv) The appellants 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 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 :- 8.11.2023

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