

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10974 of 2023

Appellant :- Lavkush

Respondent :- State of U.P. and Another

Counsel for Appellant :- Om Prakash Yadav, Jitendra Kumar Pandey

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain, J.

List revised.

Learned A.G.A. submits that notice upon the informant/opposite party no.2 has been duly served but no one has put in appearance on her behalf.

Heard learned counsel for the appellant, 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 13.10.2023 passed by learned Additional Sessions Judge/Special Judge (SC/ST), Room No. 15, Allahabad in Bail Application No. 4997 of 2023, arising out of Case Crime No. 252 of 2023, under Sections 363, 366, 506 IPC & Section 3 (2) 5 of SC/ST Act, Police Station Nawabganj, District Prayagraj.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. As per prosecution version, on 09.06.2023 at around 8 pm, when the daughter of the informant went to ease herself, appellant along with four unknown persons enticed away her daughter. It is further submitted that during her statement recorded under Section 161 Cr.P.C. victim stated her age to be 18 years. She further stated that she accompanied the appellant out of her own will and performed marriage with him on 16.06.2023 at Lucknow. She further stated that she wants to live with the appellant. It is further submitted that victim in her statement recorded under Section 164 Cr.P.C. reiterated the same version. It is further submitted that either in the first information report or in the statements, there is no allegation against the appellant with respect to the offence under SC/ST Act. It is further submitted that victim is a minor girl and from her

statements recorded under Sections 161 and 164 Cr.P.C., it is clear that victim was a consenting party. The appellant does not have any criminal history to his credit. 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 27.07.2023 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. opposed the prayer for bail but 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 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 appellant, namely, **Lavkush** 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 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 he is accused, or suspected, of the commission of which he is 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.

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 :- 28.11.2023

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