Court No. - 85

Case :- CRIMINAL APPEAL No. - 11076 of 2023

Appellant :- Rehan
Respondent :- State of U.P. and Another
Counsel for Appellant :- Irshad Ahmad
Counsel for Respondent :- G.A.,Kripa Shanker Yadav,Manish Dev

Hon'ble Mayank Kumar Jain,J.

Heard learned counsel for the appellant, learned AGA for opposite party no.1 and learned counsel for the informant and perused the material placed on record.

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 05.10.2023 whereby the Special Judge, SC/ST Act, Sambhal at Chandausi has rejected the bail application of the appellant moved by him in Case Crime No. 317 of 2023, under Sections 376D of IPC, and Section 3(2)5 of SC/ST Act, Police Station Junawai, District Sambhal.

There is allegation against the appellant in the FIR that on 08.09.2023 at around 4.00 pm the daughter of the informant was raped by named accused Adnan.

Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. It is submitted that appellant is not named in the FIR. The victim during her statement under Section 161 Cr.P.C. did not disclose the name of the appellant even the eye witnesses named in the FIR, such as Kaptan and Sewak did not disclose the name of the appellant. They had not seen the appellant at the place of occurrence. The victim during her statement under Section 164 Cr.P.C. first time disclosed the name of the appellant. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellant is languishing in jail since 22.09.2023 having no criminal history. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. has supported the order passed by the

Sessions court and vehemently opposed the prayer for grant of bail to the appellant and submits that the allegations involved are very serious in nature but he could not point out any material to the contrary.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has not 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 05.10.2023 is, hereby, set aside.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court is of the opinion that the appellant is entitled to be enlarged on bail.

Let appellant, **Rehan** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) 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.

(ii) The appellant shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The appellant shall not indulge in any criminal activity or

commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the appellant, if there is no other legal impediment.

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.

The criminal appeal is allowed.

Order Date :- 14.12.2023
Mohit

Digitally signed by :-
MOHIT KUMAR KUSHWAHA
High Court of Judicature at Allahabad