

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11033 of 2023

Appellant :- Nand Kishor @ Nandu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Vinod Kumar Shukla

Counsel for Respondent :- G.A., Pradeep Kumar Tiwari

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the appellant, Sri S.K. Ojha, learned AGA for the State and learned counsel for the informant 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 27.09.2023, whereby the Special Judge, SC/ST Act/Additional Sessions Judge, Agra has rejected the bail application of the appellant moved by him in Case Crime No. 193 of 2023, under Sections 376, 420, 504, 506 IPC and Section 3(2)V SC/ST Act and Section 66E of I.T. Act, Police Station Kirawali, District Agra.

There is allegation against the appellant that appellant introduced the informant to one other person Manish. Appellant assured her that he (Manish) prepared her Rashan Card. Prior to three months of the incident the appellant called the prosecutrix and committed rape with her. Appellant created an indecent video and had taken Rs.15,000/- from the victim. The appellant threatened the victim that he would circulate the video and on that pretext he established physical relations with her. She was addressed with caste related abuses.

Learned counsel for the appellants has submitted that appellant is innocent and has been falsely implicated in this case. During her statement under Section 161 Cr.P.C. she did not show anything about Rs.15,000/-. It is submitted that there is no evidence that appellant circulated the indecent video of the victim. During her statement under Section 164 Cr.P.C. she stated that two persons along with appellant gang raped with her but another accused Manish and other persons were exonerated during investigation. Charge sheet has been filed against the appellant. There are material contradiction in the statement of prosecutrix in the 161

and 164 Cr.P.C. The medical report does not corroborate the version of FIR. The appellant has criminal history of one case to his credit which is duly explained in para 3 of supplementary affidavit. It is a case of malicious prosecution under the provisions of S.C./S.T. Act. Appellant is languishing in jail since 28.07.2023. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. assisted by learned counsel for the informant has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the appellant and argued that so far as the allegation of committing rape against the appellant is concerned, victim during her statement under Section 161 and 164 Cr.P.C. has categorically supported the case of prosecution. The pendrive containing indecent video was given to Investigating Officer in which it was found that appellant was committing indecent activities. There is no contradiction in the statement of victim about committing rape.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has 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 27.09.2023 is affirmed.

Having considered the submissions of the parties noted above, finding no force in the submissions made by the learned counsel for the appellant; without expressing any opinion on the merits of the case, the Court is of the opinion that the appellant is not entitled to be enlarged on bail and the appeal deserves to be dismissed.

The criminal appeal is dismissed.

However, the trial court is directed to record the statement of victim within three months from the date of production of certified copy of this order.

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.

Order Date :- 13.12.2023/Mohit