

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11038 of 2023

Appellant :- Hariom Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Pankaj Sharma

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

The first bail application was rejected by this Court vide order dated 13.07.2023 passed in Criminal Appeal No. 5093 of 2023.

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 25.10.2023 passed by learned Special Judge S.C./S.T. Act, Mathura in Second Bail Application No. 4599 of 2023, arising out of Case Crime No. 58 of 2023, under Sections 376, 420, 504 IPC, and Sections 3(2) V of Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act 1989, Police Station Jait, District Mathura.

Learned counsel for the appellant argued that the appellant has been falsely implicated in this case. It is further submitted that statement of prosecutrix was recorded during her cross examination. She retracted with her statement recorded in the examination in chief as well as the statement recorded under Section 164 Cr.P.C. She stated that during her cross examination the F.I.R. was drafted by his lawyer which was not read over to her. The applicant has not committed rape with her. She lodged F.I.R. on the basis of suspicion. It is further submitted that 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 24.02.2023 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, Hariom Yadav 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 :- 5.12.2023

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