

Court No. - 85

Case :- CRIMINAL APPEAL No. - 11383 of 2023

Appellant :- Nitin Alias Badau Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Siya Ram Yadav

Counsel for Respondent :- G.A.

Hon'ble Mayank Kumar Jain,J.

List revised.

Compliance affidavit filed by learned A.G.A. is taken on record.

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 01.11.2023 passed by learned Special Judge SC/ST (P.A.) Act, Jaunpur in Bail Application No. 476 of 2023, arising out of Case Crime No. 232 of 2023, under Sections 376 IPC Section 3 (2) 5 of SC/ST Act, Police Station Machhali Shahar, District Jaunpur.

Learned counsel for the appellant argued that the appellant is innocent and he has been falsely implicated in this case. As per the allegation of first information report, on 12.09.2023 at around 4 pm, appellant committed rape with the prosecutrix. It is further submitted that appellant is aged around 22 years while prosecutrix is 52 years old. It is further submitted that medical examination of the prosecutrix was done on the next day of incident and no sign of rape or external injury was observed which indicates that allegations made in the first information report are false. 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 13.09.2023 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 by contending that prosecutrix has corroborated the version of prosecution in her statements recorded under Sections 161 and 164 Cr.P.C. However, he 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, **Nitin alias Badau 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 :- 11.12.2023/AKT