

Court No. - 15

Case :- CRIMINAL APPEAL No. - 126 of 2023

Appellant :- Ram Lal Nishad

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko And Another

Counsel for Appellant :- Ghulam Mohammad Kamil, Ram Singh, Vinay Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. This Court vide order dated 17.1.2023 issued notice to the opposite party No. 2. As per office report dated 9.2.2023 notice has been served personally on the opposite party No. 2, but no counter-affidavit has been filed neither any counsel represent opposite party No. 2. Thereafter, the case was listed on 10.2.2023 and 15.2.2023 and thereafter this Court passed the order on 3.8.2023, whereas last opportunity was granted to the opposite party No. 2 to file counter-affidavit. Thereafter, the case was again listed on 11.9.2023 and 12.10.2023, but no counter-affidavit has been filed. Today also, when the case is taken up in the revised-list, no counter-affidavit has been filed on behalf of opposite party No. 2 nor any counsel is present to press his case. It appears the opposite party No. 2 is not interested to contest this case, thus, the counsel for the appellant submits that the matter pertains to bail and this matter may be heard finally today. This Court has no option but to proceed for final arguments.

2. Heard Sri Ram Singh, learned counsel for the appellant as well as learned A.G.A. for the State and perused the entire record.

3. This Criminal Appeal under Section 14-A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 22.12.2022 passed by learned Special Judge, S.C./S.T. Act, Ambedkar Nagar, in Bail Application No. 2207 of 2022 (Computerized No. UPAN010043272022), Case Crime No. 51 of 2022, under Section 500, 504 I.P.C., Section 66E, Information Technology Act, 2000 and Section 3(1)(Da), 3(1)(Dha), of S.C./S.T. Act, Police Station Alapur, District Ambedkar Nagar, whereby the bail application of the appellant has been rejected.

4. Learned counsel for the appellant submits that the appellant is innocent and he has been falsely implicated in the present case. He further submits that in fact the alleged victim and the appellant were in relation for the last two years. She used to talk on mobile phone with the appellant. When this fact came in the knowledge of the family members, then they fixed her marriage to some other place. Thereafter, the victim stopped talking to the appellant and she also not made any relation with the appellant, but the appellant put pressure to marry with her and also threatened to viral her photographs which he was having. These facts have been admitted by the alleged victim herself in her statements recorded under Section 161 and 164, Cr.P.C.

5. Learned counsel for the appellant further submits that in her statements recorded under Sections 161 and 164 Cr.P.C. the victim has not made any allegation against the appellant regarding forceful physical relation. Only allegation of making viral of photographs is being made, whereas the counsel submits that the photographs are of normal nature and these are not an obscene or vulgar photographs, thus, the appellant did not want to take any advantage of those photographs. The photographs were taken on some occasions without any *mala fide* intention. He further submits that when the alleged victim's marriage was fixed, she made difference from the appellant and it was also argued that the victim's marriage has been solemnized to some other person and she is living happily with him. In this regard, he has also annexed the marriage-invitation-card with the supplementary affidavit dated 3.8.2023 as Annexure S.A.-1, which shows the date of marriage of the victim to be 1.6.2023. Thus, the counsel submits that the appellant's intention is very much clear that once the marriage of the victim was already settled, then he had no concern with the victim and he has not created any hinderance in the marriage of the victim, thus, he submits that the case of the appellant be considered by this Court sympathetically and he should be released on bail and the appeal be allowed.

6. It was further submitted by the learned counsel for the appellant that apart from the allegation that some photographs have been made viral, no other allegation has been levelled against the appellant by the complainant, who is mother of the victim or the victim herself. It is also argued that none of the villagers have supported the version of the complainant in their

statements.

7. Several other submissions in order to demonstrate the falsity of the allegations made against the appellant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the appellant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It has also been pointed out that the accused is not having any criminal history and he is in jail since 07.12.2022 and he has already undergone substantial period of detention. It has also been argued that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

8. Sri Ashok Srivastava, A.G.A. opposed the arguments as advanced by the learned counsel for the appellant and submitted that the offence is made out against the appellant and submitted that the appeal be rejected.

9. After considering the arguments as advanced by the learned counsel for the parties and after perusal of the records this court finds that the allegation in the first information report as well as in the statement of the victim recorded under Sections 161 and 164, Cr.P.C. it is stated that the prosecutrix herself had admitted that she was in relation with the appellant for the last two years and she used to talk with him on mobile phone and when this fact came to the knowledge of her family members, they fixed her marriage to some other place. There also appears force in the arguments of the learned counsel for the appellant that as per victim's own version after her marriage was fixed, she did not make any contact with the appellant, and later on she got married with some other person. In this regard marriage-card is also filed as Annexure No. S.A.1 to the supplementary affidavit dated 3.8.2023. There also appears force in the argument of the learned counsel for the appellant that the victim or the mother, who is complainant, has not made any allegation against the appellant regarding forceful physical assault; except the fact that the appellant threatened the victim to viral some photographs, it has not been stated anywhere in the statement or in the first information report that the photographs which were

taken by the appellant are vulgar or obscene photographs, which humiliates the victim in the Society. There also appears force in the argument that there is no such photograph that was viralled nor there is anything recorded by the investigating officer while submitting the chargesheet. Whatsoever photographs are available with the appellant, that are normal photographs which does not create any hinderance in the marriage of the victim, thus, the marriage of the victim has been solemnized and she is living happily with her husband and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of **Dataram Singh vs. State of UP and another**, reported in **(2018) 3 SCC 22**, this Court is of the view that the learned court below has failed to appreciate the material available on record. The order passed by the court below is liable to be set aside.

10. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 22.12.2022 passed by learned Special Judge, S.C./S.T. Act, Ambedkar Nagar, in Bail Application No. 2207 of 2022 (Computerized No. UPAN010043272022), Case Crime No. 51 of 2022, under Section 500, 504 I.P.C., Section 66E, Information Technology Act, 2000 and Section 3(1)(Da), 3(1)(Dha), of S.C./S.T. Act, Police Station Alapur, District Ambedkar Nagar, is hereby set aside and reversed.

11. Let the appellant, **Ram Lal Nishad** be released on bail in the Case Crime No.51 of 2022, under Section 500, 504 I.P.C., Section 66E, Information Technology Act, 2000 and Section 3(1)(Da), 3(1)(Dha), of S.C./S.T. Act, Police Station Alapur, District Ambedkar Nagar, with the following conditions:-

(i) The appellant shall furnish a personal bond with two sureties each of like amount to the satisfaction of the court concerned.

(ii) The appellant shall appear and strictly comply following terms of bond executed under section 437 sub section 3 of Chapter- 33 of Cr.P.C.:-

(a) The appellant shall attend in accordance with the conditions of the bond executed under this Chapter.

(b) 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, and

(c) 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.

(iii) The appellant shall cooperate with investigation /trial.

(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 court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi) In case, the appellant misuses the liberty of bail during trial, in order to secure his presence, proclamation under section 82 Cr.P.C. is issued and the appellant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(vii) The appellant shall remain present, 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 Cr.P.C. If in the opinion of the trial court 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 against him in accordance with law.

12. The trial court is also directed to expedite the trial of the aforesaid case by following the provisions of Section 309 Cr.P.C., strictly without granting any unnecessary adjournments to the parties, in case there is no other legal impediment.

(Shamim Ahmed, J.)

Order Date :- 1.11.2023

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