

Neutral Citation No. - 2023:AHC-LKO:71037**Court No. - 15**

Case :- CRIMINAL APPEAL No. - 133 of 2022

Appellant :- Haridas Yadav

Respondent :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. And Another

Counsel for Appellant :- Arun Sinha, Ram Chandra Singh, Siddhartha Sinha, Smriti

Counsel for Respondent :- G.A., Vivek Singh

Hon'ble Shamim Ahmed, J.

1. The case is taken up in the revised call.
2. Heard Ms. Smriti, the learned counsel for the appellant as well as Sri Ashok Kumar Singh, the learned A.G.A. for the State-opposite party No. 1 and perused the entire record.
3. Learned A.G.A. has filed counter affidavit and in reply thereto learned counsel for the appellant has filed rejoinder affidavit.
4. Today when the case is taken up, neither any counsel has appeared on behalf of opposite party No. 2 nor counter affidavit has been filed on her behalf.
5. This Court vide order dated 25.01.2022 issued notice to the opposite party No.2. As per the office report dated 23.04.2022 notice has already been served upon the opposite party No. 2. Sri Vivek Singh, Advocate has put in appearance on behalf of opposite party No.2, but has not filed any counter affidavit till date. The matter was listed more than ten times, but no counter affidavit has been filed. Thereafter, this Court vide order dated 17.07.2023 granted ten days time to file counter affidavit. The order dated 17.07.2023 is being reproduced herein-below:

“Ms. Smriti, the learned counsel for the appellant submits that she has searched Shri Vivek Singh, the learned counsel for the opposite party No. 2 but she could not find her, even her mobile number has also been put by him in block list.

The matter was listed several times but the learned counsel for the opposite party No. 2 neither appeared nor filed any counter affidavit.

Accordingly, Shri Vivek Singh, the learned counsel for the opposite party No. 2 is granted ten days' and no more time to file counter affidavit. Three days, thereafter, is allowed to the learned counsel for the appellant to file rejoinder affidavit.

Put up this case on 26.07.2023 peremptorily before appropriate Court."

Thereafter, on 28.08.2023 this Court again granted time to file counter affidavit. The order dated 28.08.2023 is being reproduced herein-below:

"Ms. Smriti, learned counsel for the appellant submits that in spite of several attempts, she could not find Sri Vivek Singh, learned counsel for the opposite party no.2 in the premises of the High Court. She also submits that she tried to search Sri Vivek Singh, learned counsel for the opposite party no.2 several times, however, she could not know about his whereabouts. She further submits that she may be given one more opportunity to serve written notice upon him about mentioning of the case to be taken up out of turn.

The reason appears to be justified.

One more opportunity is being given to learned counsel for the appellant to serve a written notice upon Sri Vivek Singh, learned counsel for the opposite party no.2 about mentioning of the case to be taken up out of turn.

Sri Vivek Singh, learned counsel for the opposite party no.2 is also directed to appear in this case on the next date fixed for argument.

Put up this case on 11.09.2023 peremptorily."

6. Learned counsel for the appellant submits that Sri Vivek Singh, learned counsel for the opposite party No.2 never used to take written notice, so that the matter be taken up. Thus, she has sent notice by Speed Post on 04.09.2023 and on 05.09.2023. The copy of the Speed Post receipts are being shown to the Court, in which the said notice was already received. The said track consignment as well as the photocopy of the receipts of both the dates are taken on record. Learned counsel for the appellants submits that as the matter pertains to bail, thus the case may be finally heard by this Court.

7. Sri Ashok Kumar Singh, Learned A.G.A. submits that as the notice has already been served by the Speed Post and there is a track consignment that the notice has already been served and the counsel is avoiding to appear in this case, thus he submits that the matter may be heard finally.

8. In the above circumstances, this Court has no option but to proceed for final arguments to decide the present appeal.

9. The present criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 22.10.2021 passed by the Court of Special Judge, SC/ST (P.A.) Act Hardoi in Bail Application No. 2776/2021 in Case Crime No. 516/2021, under Sections 452, 456, 376, 354, 504, 506 I.P.C. and Section 3(1) (dha), 3 (2) (5), 3(2) (5) a SC/ST Act, Police Station Bilgram, District Hardoi, whereby the bail application of the appellant has been rejected.

10. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case, due to enmity and village party bandi. No such incident took place as alleged by the prosecution. She further submits that the prosecution has made improbable story inasmuch as according to the F.I.R. and according to the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., the appellant has committed rape for the last six months while threatening her and about a month before the present incident, the prosecutrix has informed to her family members about the act of the appellant, but nobody of the family members has lodged the F.I.R. or has made any complaint to any authorities, thus she submit that the parties appears to be consenting, but only with the fear of the society and of the family member, the present case has been lodged against the appellant.

11. Learned counsel for the appellant further submits that as per the prosecution the appellant has committed rape upon the prosecutrix on 12.07.2021, but no F.I.R. was lodged and again a false incident of 24.07.2021 has been introduced by the prosecutrix, in which it is alleged that the prosecutrix was allegedly molested by the appellant and thereafter the present F.I.R. was lodged against the appellant on 25.07.2021, thus there is a delay of more than 12 days in lodging of the F.I.R. and no proper and plausible explanation has been given by the prosecutrix, that also falsify the entire prosecution story.

12. Learned counsel for the appellant submits that as a matter of fact, the appellant has never entered into the house of the prosecutrix in the night after jumping the boundary wall of the prosecutrix and false allegation has been made against the appellant, as the house of the prosecutrix is surrounded by many other houses of the locality and it is not possible for the appellant to enter into the house in the night and if so happen then there must be hue and cry by the family members of the prosecutrix or by prosecutrix itself, but no such happening took place.

13. Learned counsel for the appellant further submits that it is not in dispute that the prosecutrix is living with her family members and her family is a joint family and it is not possible for the appellant or any other person to commit the alleged crime and they were not aware about the said incident or no action has been taken by those person or by the prosecutrix for last six months, as alleged by the prosecutrix in the F.I.R., which clearly establish that a totally improbable story has been called out by the prosecutrix in the F.I.R. as well as in her statement recorded under Section 161 and 164 Cr.P.C.

14. Learned counsel for the appellant further submits that as per school record, the prosecutrix is major girl, aged about more than 19 years and her date of birth as per school certificate is 20.08.2001, thus she is major and she knew her consequential very well.

15. Learned counsel for the appellant further submits that the appellant is young boy aged about 19-20 years and due to the present case his entire career is at stake. The present F.I.R. has been lodged only with the enmity of the sitting Pradhan, as the sitting Pradhan of the village is inimical to the appellant as the appellant is the supporter of the other candidate, who contested against the sitting Pradhan. Thus, the sitting Pradhan put forward the opposite party No.2 for

lodging of the present F.I.R. against the appellant, giving her greed to get some financial aid by the State Exchequer.

16. Learned counsel for the applicant has further placed reliance of Hon'ble Apex Court judgments in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the appellant on conditions as may be imposed by the District and Sessions Judge, Faridabad."

17. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 26.07.2021, and in case the appellant is enlarged on bail, he shall not misuse the liberty of bail and he shall also fully cooperate with the trial. He has further submitted that there is no possibility of the appellant to intimidate or pressurize the witnesses or any other persons acquainted with the facts of the present case.

18. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 22.10.2021 passed by the Court of Special Judge, SC/ST (P.A.) Act Hardoi in Bail Application No. 2776/2021 in Case Crime No. 516/2021, under Sections 452, 456, 376, 354, 504, 506 I.P.C. and Section 3(1) (dha), 3 (2) (5), 3(2) (5) a SC/ST Act, Police Station Bilgram, District Hardoi deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

19. 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 having criminal history of three cases except the present case which has been explained in Para 7 of the rejoinder affidavit and he is in jail since 26.07.2021 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

20. Per contra, Sri Ashok Kumar Singh, learned A.G.A. has vehemently opposed the prayer by submitting that there is an allegation against the appellant in the statement recorded under Section 161 and 164 Cr.P.C. as well as in the version of the F.I.R., thus prima facie commission of offence is made out against the appellant. Therefore, the accused/ appellant is not entitled to be enlarged on bail and the instant criminal appeal deserves to be dismissed. However, he has been unable to dispute the other factual submissions advanced by the learned counsel for the accused/appellant.

21. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, unlikelihood of early conclusion of trial and also in absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that there appears force in the argument of learned counsel for the appellant that according to the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., the appellant has committed rape for the last six months while threatening her and about a month before of the present incident, the prosecutrix has informed to her family members about the act of the appellant, but nobody of the family members has lodged the F.I.R. or has made any complaint to any authorities; there appears force in the argument of learned counsel for the appellant that it is not in dispute that the prosecutrix is living with her family members and her family is a joint family and it is not possible for the appellant or any other person to commit the alleged crime and they were not aware about the said incident or no action has been taken by those person or by the prosecutrix for last six months, as alleged by the prosecutrix in the F.I.R., which clearly establish that a totally improbable story has been called out by the prosecutrix in the

F.I.R. as well as in her statement recorded under Section 161 and 164 Cr.P.C.; there also appears force in the argument of learned counsel for the appellant that the present F.I.R. has been lodged only with the enmity of the sitting Pradhan, as the sitting Pradhan of the village is inimical to the appellant as the appellant is the supporter to the other candidate, who contested against the sitting Pradhan. Thus, the sitting Pradhan put forward the opposite party No.2 for lodging of the present F.I.R. against the appellant, giving her greed to get some financial aid by the State Exchequer; the parties appears to be consenting parties; further considering the fact that appellant is in jail since 26.07.2021 and has now by done a substantial period of detention 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 **Kamal (supra) and 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 impugned order passed by the trial court is liable to be set aside.

22. Accordingly, the appeal is **allowed**. Consequently, the order dated 22.10.2021 passed by the Court of Special Judge, SC/ST (P.A.) Act Hardoi in Bail Application No. 2776/2021 in Case Crime No. 516/2021, under Sections 452, 456, 376, 354, 504, 506 I.P.C. and Section 3(1) (dha), 3 (2) (5), 3(2) (5) a SC/ST Act, Police Station Bilgram, District Hardoi is hereby **reversed** and **set aside**.

23. Let the appellant, **Haridas Yadav**, be enlarged on bail in Case Crime No. 516/2021, under Sections 452, 456, 376, 354, 504, 506 I.P.C. and Section 3(1) (dha), 3 (2) (5), 3(2) (5) a SC/ST Act, Police Station Bilgram, District Hardoi 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.

24. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the prayer for bail and must not be construed to have any reflection on the ultimate merit of the case.

25. The trial court is also directed to expedite the trial of the aforesaid case, within a period of one year from today, 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.

Order Date :- 30.10.2023

Arvind