

Court No. - 15

Case :- CRIMINAL APPEAL No. - 184 of 2023

Appellant :- Rabba @ Rabiya Khatoon

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

Counsel for Appellant :- Deepanker Kumar, Neel Kisan

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

Hon'ble Shamim Ahmed, J.

Case is taken up in the revised list.

Learned counsel for the appellant as well as the learned A.G.A. are present. None is present for the opposite party No. 2/complainant, though counter affidavit on her behalf has been filed.

Learned counsel for the appellant is pressing to hear this bail, stating that this is a bail-matter. The appellant is a lady and she is languishing in jail since 06.09.2022. In these circumstances, this Court is left with no other option, but to hear this case finally.

Heard learned counsel for the appellant, Ms. Charu Singh, learned A.G.A. for opposite party no. 1/State, and perused the entire record.

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 29.11.2022 passed by the learned Special Judge, S.C./S.T. Act, Sitapur, in Bail Application No. 618 of 2022, Rabba alias Rabiya Khatoon v. State of U.P., Case Crime No. 307 of 2022, under Sections 323, 376D, 366, 344, 506, 109, 120-B I.P.C. and Section 3(2)(v) of S.C./S.T. (P.A.) Act, 1989, and Section 3/5, U.P. Prohibition of Unlawful Conversion of Religion Act, 1921, Police Station Rausa, District Sitapur, whereby the bail application of the appellant has been rejected.

Learned counsel for the appellant submits that the appellant is innocent. She has been falsely implicated in the present case due to enmity and village party-bandi. No such incident, as alleged by the prosecutrix in the first information report, ever took place. The F.I.R. regarding the incident of 14.07.2022 was lodged on 18.08.2022. The appellant is a lady and she has falsely been roped along with the other co-accused, named in the F.I.R. She has not forced the prosecutrix for change of her

religion. The entire story as developed in the first information report is afterthought and has been lodged only with the intention to defame the image of the appellant and his entire family in the society. It has been further submitted that the statements of the prosecutrix recorded under Sections 161 and 164, Cr.P.C. are also false and fabricated and there are material contradictions in these statements.

Learned counsel for the appellant further submits that actually the real story behind the entire episode is that the prosecutrix was not happy with her in-laws' behaviour and on 14.07.2022 she left their house and went to Punjab. In this regard a Gumshudgi report was also given by husband of the Prosecutrix Lavkush. The said report was registered in the G.D. No. 51 on 16.07.2022 at 17.50 and Case No. 01 under Section 98, Cr.P.C., State v. Seema, was registered. This fact was very much clear from the statement of the prosecutrix recorded on 31.07.2022, when she was recovered by the Police on 30.07.2022 and produced before the Sub Divisional Magistrate, Biswan, District Sitapur. In her statement recorded before the Sub Divisional Magistrate, Biswan on 31.07.2022 the prosecutrix has clearly admitted this fact that she is aged about 22 years and she has already been got married with one Lavkush and her in-laws were not happy with the marriage. They were regularly demanding dowry from the prosecutrix. Being fed up by the demand of the in-laws, the prosecutrix left their house and went to Punjab alone. In her statement, the Magistrate also recorded this finding that she returned from Punjab on 30.07.2022 and was caught by the Police on the same day, i.e. on 30.07.2023, and was left to her parent's house. The Magistrate further in his order dated 31.07.2022 stated that the prosecutrix appears to be major and she is free to go wherever she wants, and a direction was given to the S.H.O., Biswan to leave the prosecutrix at the place where she wants to go. Certified copy of the order dated 31.07.2022 is filed as Annexure No. 8 to the affidavit filed in support of this appeal.

As per order dated 31.07.2022 of the Sub Divisional Magistrate, Biswan, in Case No. 01 under Section 98 Cr.P.C., State v. Seema, it is crystal clear that the prosecutrix had gone to Punjab on her own sweet-will due to torture and demand of dowry by her in-laws and thereafter she was recovered on 30.07.2022 by the Police and was produced before the Magistrate. In her statement recorded before the Magistrate, she has herself admitted that she had gone to Punjab on her own sweet-will. She has not taken name of the appellant or any other co-accused nor she has made any allegation of committing rape on her by any of the named accused persons.

Learned counsel for the appellant further submits that the present F.I.R. has been lodged only with the intention to get some financial aid from the State Exchequer and the same is afterthought, as it was lodged after more than 18 days of the alleged order dated 31.07.2022 passed by the Sub Divisional Magistrate, Biswan and a totally improbable story has been built up in the first information report against the appellant and other co-accused persons named in the first information report. From the version of the first information report the date of incident was mentioned as 14.07.2022, whereas in this regard a Gumshudgi had already been given to the Police by the husband of the prosecutrix and the same was registered in the Police G.D. on 16.7.2022, which fact has been carved out from the order dated 31.07.2022 by the Sub Divisional Magistrate, Biswan.

It was further argued by the learned counsel for the appellant that if anything had been happened with the prosecutrix during that period, she would have certainly disclosed this fact before the Magistrate, Biswan, on 31.07.2022, when her statement was recorded before the Magistrate, but she has not even whispered anything about the incident happened with her, as alleged in the first information report, thus, the entire first information report appears to be false and fabricated, lodged with *mala fide* intention, only to defame the image of the appellant and other co-accused in the society and also to defame their family members. The statements under section 161 and 164, Cr.P.C. were also recorded under the pressure created by the Police and the family members only with the intention to falsely implicate the appellant and other co-accused persons, named in the first information report, whereas nothing had happened, as alleged by the prosecutrix in her statement. The medical-report also does not support the allegation, as levelled by the prosecutrix.

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 she is ready to cooperate with the process of law and shall faithfully make herself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon her. It has also been pointed out that the accused is not having any criminal history and she is in jail since 06.09.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Ms. Charu Singh, learned A.G.A. has opposed the prayer for

bail, but could not dispute the order dated 31.07.2022 passed by the Sub Divisional Magistrate, Biswan, as the certified copy thereof has been annexed.

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, the unlikelihood of early conclusion of trial and also in the absence of any convincing material to indicate the possibility of tampering with the evidence and after considering the arguments as advanced by the learned counsel for the parties and after perusal of the record, this Court finds that *prima facie* the allegations appear to have been levelled with *mala fide* intentions, only with the intention to get some financial benefit from the State Exchequer in lodging the present first information report after the order dated 31.7.2022 passed by the Sub Divisional Magistrate, Biswan, i.e. after more than 18 days of the alleged order and that the F.I.R. was lodged on 18.08.2022 in respect of the incident which occurred on 14.7.2022. Further, there appears force in the arguments of the learned counsel for the appellant that if anything had happened with the prosecutrix during that period, then certainly something must have come out from her mouth before the Sub Divisional Magistrate, Biswan on 31.07.2022, when her statement was recorded, when she was recovered on 30.7.2022 by the Police, whereas in the statement she has admitted the fact that she had gone to Punjab alone on her own sweetwill, because there was a pressure created by her in-laws of the prosecutrix regarding demand of dowry and causing cruelty. Registration of Gumshudgi is also not disputed as the same was registered on 16.7.2022 in the G.D. and as the prosecutrix was major at the time of lodging of the F.I.R., she knew the consequences very well. There also appears force in the arguments of the learned counsel for the appellant that there are material contradictions in the statement of the prosecutrix recorded under sections 161 and 164, Cr.P.C. and also in the version of the first information report. Further, the medical-report does not support the allegation of rape, as levelled by the prosecutrix in the first information report and further considering the mandate of Article 21 of the Constitution of India and the law laid down by Hon'ble the Supreme Court in the case of **Data Ram v. State of Uttar Pradesh & anr., (2018) 3 SCC 22**, the judgment and order passed by the Court below is liable to be reversed and set aside. The appeal deserves to be allowed.

Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 29.11.2022 passed by learned Special Judge, S.C./S.T. Act, Sitapur, in Bail

Application No. 618 of 2022, Rabba alias Rabiya Khatoon v. State of U.P., Case Crime No. 307 of 2022, under Sections 323,376D,366,344,506,109,120-B I.P.C. and Section 3(2)(v) of S.C./S.T. (P.A.) Act, 1989, and Section 3/5, U.P. Prohibition of Unlawful Conversion of Religion Act, 1921, Police Station Rausa, District Sitapur, is hereby set aside and reversed.

Let the appellant, **Rabba alias Rabiya** be released on bail in the Case Crime No. 307 of 2022, under Sections 323,376D,366,344,506,109,120-B I.P.C. and Section 3(2)(v) of S.C./S.T. (P.A.) Act, 1989, and Section 3/5, U.P. Prohibition of Unlawful Conversion of Religion Act, 1921, Police Station Rausa, District Sitapur, 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 she is accused, or suspect, 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 she 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 her 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 her in accordance with law.

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.

It is made clear that this order is passed in respect of the present appeal only.

(Shamim Ahmed, J.)

Order Date :- 7.11.2023
A.Nigam