

Neutral Citation No. - 2023:AHC-LKO:80412

Court No. - 15

Case :- CRIMINAL APPEAL No. - 372 of 2023

Appellant :- Umesh Yadav

Respondent :- State Of U.P. Thru. Its Addl. Cheif Secy. Deptt. Of Home, Lko. And Another

Counsel for Appellant :- Krishna Gopal

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Sri Krishna Gopal, learned counsel for the appellant and Sri Awadesh Kumar Pandey, learned A.G.A. for the State.

2. This Criminal Appeal under Section 14-A (2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 17.01.2023 passed by the Court of learned Special Judge, Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act/Additional Sessions Judge, Barabanki in Criminal Case No. 1508/2022 (Umesh Yadav Vs. State of U.P.) arising out of Case Crime No.492/2022, under Sections 376, 506, 504 I.P.C. and Section 3(2) (v) S.C./S.T. Act, Police Station Dewa, District Barabanki, whereby the bail application of the appellant has been rejected.

3. This Court vide order dated 12.07.2023 had passed the following order:

“Ms. Charu Singh, learned A.G.A. submits that her counter affidavit is under preparation. She prays for and is allowed two weeks and no more further time to file counter affidavit. Three day's, thereafter is allowed to learned counsel for the appellant to file rejoinder affidavit.

As per Office Report dated 13.03.2023, notice has already been served upon opposite party no.2, but till date neither anyone has put in appearance nor any counter affidavit has been filed on behalf of opposite party No.2.

As a last opportunity, two week and no more time is allowed to opposite party No.2 to file counter affidavit.

Three days, thereafter is allowed to learned counsel for the appellant to file rejoinder affidavit.

Put up this case on 08.08.2023.”

4. Learned A.G.A. has filed counter affidavit and in reply thereto learned counsel for the appellant has filed rejoinder affidavit.

5. 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. It appears that the opposite party No.2 is not interested to file any counter affidavit.

6. In the above circumstances, as the matter pertains to bail this Court has no option but to proceed for final arguments to decide the present appeal.

7. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case due to village party bandi. No such incident took place as alleged by the prosecution. The entire prosecution story is false and fabricated. He further submits that whatever the allegation has been levelled by the prosecutrix against the appellant is only with the intention to falsely implicate him. The prosecutrix is a married lady having six children.

8. Learned counsel for the appellant further submits that there is contradiction in the statement of the prosecutrix recorded under

Section 161 and in the statement recorded before the court below on 10.05.2023. The prosecutrix in her statement recorded under Section 161 Cr.P.C. has stated that her husband went to Varanasi and in the statement recorded before the court below on 10.05.2023 she has stated that her husband went to Azamgarh, thus the allegation as levelled by the prosecutrix is false. Learned counsel for the appellant further submitted that there is no role of appellant in the alleged crime, therefore, he may be enlarged on bail by this Court and the present appeal may be allowed.

9. Learned A.G.A. submits that there is direct allegation of rape against the appellant. The prosecutrix in her statement recorded under Section 161 and 164 Cr.P.C. made an allegation that the appellant entered into the room and committed rape with the prosecutrix, when her statement was recorded before the court below on 10.05.2023 she made an allegation of rape against the appellant that the appellant has committed rape with her in the night and she also admitted this fact whatever statement she had given under Section 161 and 164 Cr.P.C., that was given on her own sweet will, there was no pressure and she went with her husband to the police station. He further submits that once the prosecutrix has admitted this fact before the court below in her statement that appellant has committed rape. Learned A.G.A. further submits that there is direct allegation against the appellant. Prima facie, offence is made out against the appellant and the appellant is not entitled to get any relief by this Court. Copy of the statement recorded before the court below on 10.05.2023 is filed as Annexure SA-1 to the supplementary affidavit filed on 28.11.2023.

10. After considering the arguments advanced by learned counsel for the appellant and learned A.G.A. this court is of the view that there is

direct allegation of rape against the appellant. There is no any contradiction in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. and in the version of the F.I.R., except regarding the place where her husband went. The prosecutrix in her statement has stated that her husband went to Varanasi and in the statement recorded before the court below on 10.05.2023 she has stated that her went to Azamgarh, which is not relevant while deciding bail application, the main matrix is whether the rape has been committed or not and as per the statement of the prosecutrix, which was recorded before the Court below on 10.05.2023, the prosecutrix has stated that appellant has committed rape with her, there appears force in the argument of learned A.G.A. that the appellant is not entitled to get any relief by this Court.

11. The order dated 17.01.2023 does not suffer from any irregularity or illegality. Thus, the impugned order dated 17.01.2023 does not need any interference by this Court.

12. In view of above, bail application of the appellant is rejected.

13. Consequently, the appeal is **dismissed**.

14. 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.

15. The trial court is 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 :- 06.12.2023

Arvind