

Neutral Citation No. - 2023:AHC-LKO:68259

Court No. - 15

Case :- CRIMINAL APPEAL No. - 632 of 2023

Appellant :- Sharif

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

Counsel for Appellant :- Ram Babu Singh, Pawan Kumar
Nigam, Seema Kashyap, Smriti

Counsel for Respondent :- G.A., Abhishek Shukla, Diwakar Singh
Gautam

Hon'ble Shamim Ahmed, J.

1. Heard Ms. Smriti, the learned counsels for the appellant as well as Sri Diwaker Singh, learned counsel for the opposite party No.2 and Ms. Charu Singh, the learned A.G.A. for the State-opposite party No. 1 and perused the entire record.

2. This Court vide order dated 31.07.2023 passed the following order:

“Ms. Charu Singh, learned A.G.A. for the State submits that she has already filed counter affidavit on 28.07.2023 in the Registry, however, the same is not available on record.

Office is directed to trace out the counter affidavit filed by the learned A.G.A. for the State and place it on record of the case by the next date of listing.

Learned counsel for the appellant has filed rejoinder affidavit today in the Court, the same is taken on record.

Sri Diwakar Singh Gautam, learned counsel for the opposite party no.2 prays for and is granted ten days and no more further time to file counter affidavit. Three days thereafter is allowed to learned counsel for the appellant to file rejoinder affidavit.

Put up this case on 23.08.2023.”

3. Thereafter, the case was listed on 23.08.2023, 28.08.2023, 25.09.2023 and 05.10.2023, but date till no counter affidavit has been

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

4. Learned A.G.A. has filed counter affidavit and in reply thereto learned counsel for the appellant has filed rejoinder affidavit. Learned counsel for the opposite party No.2 submits that he will argue the case in absence of counter affidavit.

5. 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 19.05.2022 passed by the Court of learned Special Judge, SC/ST (P.A.) Act, District Hardoi in Second Bail Application No. 1009/2022: Sharif Vs. State, arising out of Case Crime No.117/22, under Sections 344, 376, 323, 504, 506 I.P.C. and Section 3(1) (da) (dha), 3(2) (5), 3(2) (5) (a) SC/ST Act, Police Station Atrauli, District Hardoi, whereby the bail application of the appellant has been rejected.

6. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case, whereas the facts of the case are that appellant was employed with the father of the prosecutrix as driver of Tractor. There was some dispute in respect of some payment, as salary, on denial by the father of the prosecutrix, which was demanded by the appellant.

7. Learned counsel for the appellant further submits that as per the version of the F.I.R. the date of the alleged incident is 04.03.2022 and the F.I.R. was lodged on 15.04.2022, after more than one month and no plausible explanation regarding delay was given.

8. Learned counsel for the appellant further submits that the prosecutrix in her statement recorded under Section 161 and 164 Cr.P.C. has stated that the appellant along with one person took her to Lucknow, kept in a room and made physical relation forcefully. Learned counsel for the appellant further submits that there are material contradiction in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. The parties are consenting parties, but due to fear of the police and family members the prosecutrix has changed her version and made allegation of making physical relation against the appellant.

9. Learned counsel for the appellant submits that the allegation of rape got demolished after perusal of the medical report. The doctor on the basis of external and internal examination has submitted that no

definite conclusion regarding sexual assault can be given. The doctor has further opined that there is no mark of external or internal injury seen nor any bleeding or discharge was present at the time of examination. The age of the prosecutrix is 18 years, thus she is major and knew her consequences very well.

10. Learned counsel for the appellant further submits that the entire allegation as levelled against the appellant is false and fabricated and was lodged only with the intention to take some financial aid by the State Exchequer, as the prosecutrix belong to SC/ST category and the appellant belongs to upper caste.

11. Learned counsel for the appellant further submits that the statement given by the father and brother of the prosecutrix is also false and fabricated, no such incident took place and there is material contradiction in their statements.

12. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 22.04.2022, who has no previous criminal history, 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.

13. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 19.05.2022 passed by the Court of learned Special Judge, SC/ST (P.A.) Act, District Hardoi in Second Bail Application No. 1009/2022: Sharif Vs. State, arising out of Case Crime No.117/22, under Sections 344, 376, 323, 504, 506 I.P.C. and Section 3(1) (da) (dha), 3(2) (5), 3(2) 95) (a) SC/ST Act, Police Station Atrauli, District Hardoi deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

14. 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 22.04.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

15. Sri Diwaker Singh, learned counsel for the opposite party No.2 has vehemently opposed the prayer by submitting that there is active participation of accused/appellant in the crime. Therefore, the accused/ appellant is not entitled to be enlarged on bail and the instant criminal appeal deserves to be dismissed. Ms. Charu Singh, learned A.G.A. made an agreement with the statement of the learned counsel for the opposite party No.2 and they prayed for rejection of the present appeal and submits that the appellant is not entitled to get any relief by this Court.

16. 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 there are material contradiction in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C, the parties are consenting parties, but due to fear of the police and family members the prosecutrix has changed her version and made allegation of making physical relation against the appellant and the allegation of rape got demolished after perusal of the medical report. There also appears force in the argument of learned counsel for the appellant that the doctor on the basis of external and internal examination has submitted that no definite conclusion regarding sexual assault can be given and no mark of external or internal injury seen nor any bleeding or discharge was present at the time of examination and further considering the fact that appellant is in jail since 22.04.2022 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 **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.

17. Accordingly, the appeal is **allowed**. Consequently, the order dated 19.05.2022 passed by the Court of learned Special Judge, SC/ST (P.A.) Act, District Hardoi in Second Bail Application No. 1009/2022: Sharif Vs. State, arising out of Case Crime No.117/22, under Sections 344, 376, 323, 504, 506 I.P.C. and Section 3(1) (da) (dha), 3(2) (5), 3(2) 95) (a) SC/ST Act, Police Station Atrauli, District Hardoi is hereby **reversed** and **set aside**.

18. Let the appellant, **Sharif**, be enlarged on bail in Case Crime No.117/22, under Sections 344, 376, 323, 504, 506 I.P.C. and Section 3(1) (da) (dha), 3(2) (5), 3(2) (5) (a) SC/ST Act, Police Station Atrauli, 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.

19. 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.

20. 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 :- 17.10.2023

Arvind