

Neutral Citation No. - 2023:AHC-LKO:70286

Court No. - 15

Case :- CRIMINAL APPEAL No. - 589 of 2023

Appellant :- Arif

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

Counsel for Appellant :- Anil Kumar Tripathi, Alok Singh, Yogesh
Kumar Mishra

Counsel for Respondent :- G.A., Ravindra Kumar Dwivedi, Ravindra
Kumar Dwivedi

Hon'ble Shamim Ahmed, J.

1. Heard Sri Anil Kumar Tripathi as well as Sri Alok Singh, the learned counsels for the appellant, Sri Ravindra Kumar Dwivedi, learned counsel for the opposite party No.2 and Sri Ajay Kumar Srivastava, the learned A.G.A. for the State-opposite party No. 1 and perused the entire record.
2. The pleadings have been exchanged between the parties.
3. 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 27.01.2023 passed by the Court of Special Judge/S.C./S.T. Act, (P.A. Act) Sultanpur in Bail Application No. 61 of 2023: Arif Vs. State of U.P., arising out of Case Crime No. 329/2022, under Sections 366, 376, 420, 504, 506 I.P.C. and Section 3 (2) (v) S.C./S.T. (P.A.) Act, Police Station Motigarpur, District Sultanpur, whereby the bail application of the appellant has been rejected.
4. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. He further submits that it is not in dispute that the appellant and victim were in love affairs for the last six months and the physical relation was made with the consent of the victim, this fact has been admitted by the victim in her statement recorded under Sections 161 and 164 Cr.P.C.

5. Learned counsel for the appellant further submits that as per version of the F.I.R., which was lodged by the father of the prosecutrix, it has been stated that on the false promise of marriage, the appellant made several time physical relation with the daughter of the complainant. Learned counsel for the appellant further submits that the physical relation, which was made with the prosecutrix, was not made on any false promise of marriage. The parties were consenting parties and were in love affairs with each other and in the case of love affairs, no body has asked the caste and religion. It was not in dispute that the affairs continued for more than six months. The prosecutrix is a major lady aged about 19 years and she knew the consequences very well. The appellant is also major.

6. Learned counsel for the appellant further submits that the F.I.R. was lodged after delay, but no plausible explanation was given regarding delay in lodging the F.I.R. The appellant has not made any fraud and misrepresented the fact. The appellant is interested to marry; he has also disclosed his caste, as his name is "Aais" and the appellant is ready to marry, but the family members of the appellant were not ready to solemnize the marriage.

7. Learned counsel for the appellant further submits that as the prosecutrix is a major lady, aged about 19 years and appellant is also major and they made physical relation with the consent, as per version of the F.I.R. and as per statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. thus learned counsel for the appellant submits that this factum is always present, as both of them are of different religion and there must be an obstacle by the family members of both sides. The prosecutrix, in spite of aware of this fact, made physical relation with the appellant.

8. Learned counsel for the appellant further submits that no such promise was ever made and even though if any promise is made with the prosecutrix, she was major and was knowing the consequences very well. In support of his arguments, learned counsel for the appellant has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra, (2019) 9 SCC 608** and placed reliance upon paras 17 and 21, which are reproduced hereunder:-

"17. In Uday v State of Karnataka the complainant was a college going student when the accused promised to marry her. In the

complainants statement, she admitted that she was aware that there would be significant opposition from both the complainants and accuseds families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The court observed that in these circumstances the accuseds promise to marry the complainant was not of immediate relevance to the complainants decision to engage in sexual intercourse with the accused, which was motivated by other factors: [(2003) 4 SCC 46].

25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any

evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married (Emphasis supplied).

21. *The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellants failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellants promise of marriage. Therefore, even if the facts set out in the complainants statements are accepted in totality, no offence under Section 375 of the IPC has occurred."*

Thus, learned counsel for the appellant submits that in view of the judgment rendered by the Hon'ble Supreme Court, the promise of marriage made by the appellant to the prosecutrix is in good faith as per the case set up by the complainant and it does not amount to rape as there is a consent of the prosecutrix, the age of the prosecutrix was 19 years, as such, allegation of rape levelled against the appellant are false and, therefore, the appellant is entitled for bail.

9. Learned counsel for the appellant further submits that the appellant is languishing in jail since 27.11.2022 and has no criminal history and in case the appellant is enlarged on bail, he shall not misuse the liberty of bail in the present case and he shall also fully cooperate with the trial. In the wake of heavy pendency of cases in the courts, there is no likelihood of any early conclusion of trial.

10. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 27.01.2023 passed by the Court of Special Judge/S.C./S.T. Act, (P.A. Act) Sultanpur in Bail Application No. 61 of 2023: Arif Vs. State of U.P., arising out of Case Crime No. 329/2022, under Sections 366, 376, 420, 504, 506 I.P.C. and Section 3 (2) (v) S.C./S.T. (P.A.) Act, Police Station Motigarpur, District Sultanpur deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

11. 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 appellant has no criminal history and he is in jail since 27.11.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

12. Sri Ravindra Kumar Dwivedi, learned counsel for the opposite party No.2 and Sri Ajai Kumar Srivastava, learned A.G.A. has vehemently opposed the prayer by submitting that prima facie offence is made out against the appellant and the appellant has played fraud

and made false promise of marriage. 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.

13. 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 the parties are major and are consenting parties and were in love affairs with each other for more than six months; there also appears force in the argument of learned counsel for the appellant that as per version of the F.I.R. and as per statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., the prosecutrix is a major lady, aged about 19 years and appellant is also major and they made physical relation with the consent, therefore, allegation of making physical relation by the applicant on the false promise of marriage appears to be very awkward and further considering the fact that appellant is in jail since 27.11.2022 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** and **Pramod Suryabhan Pawar (supra)**, 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.

14. Accordingly, the appeal is **allowed**. Consequently, the order dated is hereby **reversed** and **set aside**.

15. Let the appellant, Arif, be enlarged on bail in Case Crime No. 329/2022, under Sections 366, 376, 420, 504, 506 I.P.C. and Section 3 (2) (v) S.C./S.T. (P.A.) Act, Police Station Motigarpur, District Sultanpur 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.

16. 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.

17. 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 :- 27.10.2023

Arvind