

Court No. - 15

Case :- CRIMINAL APPEAL No. - 737 of 2023

Appellant :- Indal Alias Chotu

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

Counsel for Appellant :- Dr. Pooja Singh, Digvijay Singh

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

Hon'ble Shamim Ahmed, J.

1. The case is taken up in the revised call.
2. Heard Dr. Pooja Singh, the learned counsel for the appellant as well as Sri Hari Shanker Bajpai, the learned A.G.A. for the State-opposite party No. 1 and perused the entire record.
3. This Court vide order dated 03.03.2023 issued notice to the opposite party No.2.
4. As per the office report dated 25.04.2023 notice has already been served upon the opposite party No. 2 and Sri Diwaker Singh, Advocate has already put in appearance on behalf of opposite party No.2.
5. Thereafter, the case was listed on 24.08.2023 and on that date no counter affidavit has been filed by the learned counsel for the opposite party No.2. The order dated 24.08.2023 is being quoted herein-below.

“Learned A.G.A. for the State has filed counter affidavit today in the Court, the same is taken on record.

Learned counsel for the appellant prays for and is granted ten days' time to file rejoinder affidavit.

Sri Diwakar Singh, learned counsel for the opposite party no.2 is also granted ten days and no more further time to file counter affidavit. Rejoinder affidavit may also be filed within three days thereafter.

Put up this case on 21.09.2023.

It is made clear that if counter affidavit is not filed by learned counsel for the opposite party no.2 within the

aforesaid stipulated time of ten days, the matter shall be heard and decided finally on the next date. ”

6. Today when the case is taken up even in the revised call, neither any counsel has appeared on behalf of opposite party No. 2 nor counter affidavit has been filed on her behalf. Learned counsel for the appellant has served the written notice to Sri Diwaker Singh, learned counsel for the opposite party No.2 and he has received the notice, but he is not present at the time of argument of this case. The notice dated 03.11.2023 is taken on record.

7. 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.

8. 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 04.01.2023 passed by the Court of Special Judge, SC/ST, Unnao in Case Registration No. 3403/2022, Special Session Trial No. 1079/2022 and Case Crime No. 360/2022 under Sections 342, 328, 504, 376-D I.P.C. and Section 3(2) (5) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Purwa, District Unnao, whereby the bail application of the appellant has been rejected.

9. Learned counsel for the appellant submits that appellant is innocent and has been falsely implicated in the present case due to enmity and village party bandi.

10. Learned counsel for the appellant further submits that there was some dispute between the prosecutrix and the appellant on 29.07.2022 in respect of some abuses and hot talk. Thereafter, the parties were challaned under Section 151/107/116 Cr.P.C.. The copy of the challani report is annexed as Annexure No.2 to the affidavit filed in support of the bail application.

11. Learned counsel for the appellant submits that the prosecutrix was very much annoyed with the alleged incident dated 29.07.2022 and she with the intention to get revenge filed the present F.I.R. showing the date of incident as 29.07.2022 and made an allegation against the present appellant along with his brother Lakhan Singh committing rape with the prosecutrix in front of her three children. She also admitted this fact that the appellant and his brother Lakhan Singh has taken the prosecutrix in a Van to some place and committed

rape. The three children were also with her and they have given some edible item to the children also.

12. Learned counsel for the appellant submits that the date of incident was mala fide shown in the F.I.R. 21.07.2022 only to give gravity to the alleged offence, whereas the F.I.R. was lodged on 31.07.2022 at 13.41 hours i.e. after the incident dated 29.07.2022 by which the appellant as well as the prosecutrix were challaned under Section 151, 107/116 Cr.P.C., thus the intention is very clear of the prosecutrix that she want to falsely implicated the appellant and his brother Lakhan Singh in the present case, making allegation of rape.

13. Learned counsel for the appellant further submits that when the statement of the prosecutrix was recorded under Section 161 Cr.P.C. she has stated this fact the appellant belongs to community of “Thakur” and she belongs to SC/ST category, thus it is clear cut intention to get financial aid from the State Exchequer by lodging the present F.I.R. against the present appellant and his brother Lakhan Singh, who has been also made co-accused in the F.I.R.

14. Learned counsel for the appellant further submits that the entire allegation as levelled against the appellant by the prosecutrix got demolished after perusal of the medical report, wherein the doctor in his report has clearly opined that no any internal or external injury seen at the time of examination. Thereafter, she was further examined on 01.08.2022 and in the said report, no internal or external injury seen at the time of examination, thus learned counsel for the appellant submits that it does not appear justify that she was raped by two persons and she did not receive any injury on her body either internal or external, thus the story appears to be totally improbable, even though she submitted that the elder son of the prosecutrix, namely, Raj Babu, aged about 11 years has not stated anything regarding commission of rape with her mother. He only stated this fact that the appellant has given “Samosa” to him to eat.

15. Learned counsel for the appellant further submits that the entire story appears to be false and lodged only to take revenge and due to enmity, as the prosecutrix and the present appellant were challaned by the police in respect of the incident took place on 29.07.2022, thus the story as narrated in the F.I.R. is false and fabricated and the F.I.R. has been lodged only to defame the image of the appellant and his entire family in the society.

16. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 26.08.2022, 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.

17. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 04.01.2023 passed by the Court of Special Judge, SC/ST, Unnao in Case Registration No. 3403/2022, Special Session Trial No. 1079/2022 and Case Crime No. 360/2022 under Sections 342, 328, 504, 376-D I.P.C. and Section 3(2) (5) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Purwa, District Unnao deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

18. 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 26.08.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

19. Per contra, Sri Hari Shanker Bajpai, learned A.G.A. has vehemently opposed the argument as advanced by learned counsel for the appellant and submits that the offence against the appellant is made out, as there is an allegation, but has not disputed this fact that there is challani report dated 29.07.2022, in which the appellant as well as the prosecutrix were challaned under Sections 151/107/116 Cr.P.C., so it appears that the present case has been lodged to take revenge, but he submits that as the prima facie 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.

20. 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 was some dispute between the prosecutrix and the appellant on 29.07.2022 in respect of some abuses and hot talk and the parties were challaned under Section 151/107/116 Cr.P.C., due to which the prosecutrix was very much annoyed with the alleged incident dated 29.07.2022 and she with the intention to get revenge filed the present F.I.R. and made an allegation against the present appellant along with his brother Lakhan Singh committing rape with the prosecutrix in front of her three children; there also appears force in the argument of learned counsel for the appellant that the date of incident was mala fide shown in the F.I.R. 21.07.2022 only to give gravity to the alleged offence, whereas the F.I.R. was lodged on 31.07.2022 at 13.41 hours i.e. after the incident dated 29.07.2022 by which the appellant as well as the prosecutrix were challaned under Section 151/107/116 Cr.P.C., thus the intention is very clear of the prosecutrix that she want to falsely implicated the appellant and his brother Lakhan Singh in the present case, making allegation of rape; there also appears force in the argument of learned counsel for the appellant that the entire allegation as levelled against the appellant by the prosecutrix got demolished after perusal of the medical report, wherein the doctor in his report has clearly opined that no any internal or external injury seen at the time of examination, it does not appear justify that she was raped by two persons and she did not receive any injury on her body either internal or external, thus the story appears to be totally improbable; further considering the fact that appellant is in jail since 26.08.2022 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.

21. Accordingly, the appeal is **allowed**. Consequently, the order dated 04.01.2023 passed by the Court of Special Judge, SC/ST, Unnao in Case Registration No. 3403/2022, Special Session Trial No. 1079/2022 and Case Crime No. 360/2022 under Sections 342, 328, 504, 376-D I.P.C. and Section 3(2) (5) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Purwa, District Unnao is hereby **reversed** and **set aside**.

22. Let the appellant, **Indal alias Chotu**, be enlarged on bail in Case Registration No. 3403/2022, Special Session Trial No. 1079/2022 and Case Crime No. 360/2022 under Sections 342, 328, 504, 376-D I.P.C. and Section 3(2) (5) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Purwa, District Unnao 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.

23. 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.

24. 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 :- 03.11.2023

Arvind