

Court No. - 15

Case :- CRIMINAL APPEAL No. - 718 of 2023

Appellant :- Javed

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

Counsel for Appellant :- Arjun Singh Somvanshi

Counsel for Respondent :- G.A., Rakesh K. Tripathi

Hon'ble Shamim Ahmed,J.

Heard Mr. Arjun Singh Somvanshi, learned counsel for the appellant, Sri Rakesh Kumar Tripathi, learned counsel for the opposite party No. 2 as well as Sri H.S. Bajpayee, learned A.G.A.-I 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 13.02.2023 passed by learned Special Judge [S.C./S.T. (P.A.) Act], Hardoi, in Bail Application No. 465 of 2023, arising out of Special Complaint Case No. 1027 of 2016, under Sections 376, 452, 323, 504, 506 I.P.C. and Section 3(2)(v) of S.C./S.T. (P.A.) Act, Police Station Tadiyawan, District Hardoi, whereby the bail application of the appellant has been rejected.

Learned counsel for the appellant submits that the appellant is innocent and he has been falsely roped in the case due to enmity and village party-bandi and also with the intention to get financial aid from the State Exchequer by lodging the present F.I.R.

Learned counsel for the appellant further submits that the opposite party No. 2 had filed an application under Section 156(3), Cr.P.C. on 27.11.2013 in respect of an incident which had occurred on 02.10.2012. There is almost one year's delay in moving the said application and no plausible explanation regarding delay has been given in therein. Allegations levelled

in the application are totally false, fabricated and afterthought and after taking legal advice of the legal expert. It was also highlighted before this Court that the present case is lodged only with the intention to get financial aid from the State Exchequer. No such incident, as alleged by the prosecutrix through her mother, has taken place. The appellant was not present at the place of occurrence. In the application moved under Section 156(3), Cr.P.C. total six opposite parties were impleaded in the case, whereas except the Appellant herein, other persons were granted interim protection by the High Court vide order dated 15.11.2018 in application under Section 482, Cr.P.C. No. 7250 of 2018. Thereafter the appellant moved bail-application before the Court below, which was rejected without considering the material on record and the correct facts of the case, thus, he submits that the order passed by the Court below rejecting the bail-application is liable to be reversed and set aside. He further submits that the medical-examination was also conducted. In the medical-examination Doctors did not give any opinion regarding sexual assault. Only reference of some injuries was given, which were simple in nature. A copy of the medical-report is filed as Annexure-7 to the affidavit filed in support of the Bail Application. He further submits that in the statements recorded under Section 200 and 202, C.P.C. the entire story levelled against the appellant is afterthought. No ingredient of Section 376, I.P.C. is made out against the appellant, as the medical-report does not support the allegation nor there is any independent eye-witness of the alleged incident.

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 04.02.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned A.G.A. for the State as well as the opposite party No. 2 have opposed the prayer for bail, however, they have not filed any medical document which might ascertain this fact that sexual assault has been caused by the appellant. They are also unable to dispute the contentions raised by learned counsel for the appellant.

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 there is no medical-evidence on record to prove the guilt of the appellant, application under Section 156(3), Cr.P.C. has been filed after almost one year of the incident, Doctors have not given any opinion regarding sexual assault, 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 order passed by the court below is liable to be set aside.

Accordingly, the appeal is allowed. Consequently, the

impugned judgment and order dated 13.02.2023 passed by learned Special Judge [S.C./S.T. (P.A.) Act], Hardoi, in Bail Application No. 465 of 2023, arising out of Special Complaint Case No. 1027 of 2016, under Sections 376, 452, 323, 504, 506 I.P.C. and Section 3(2)(v) of S.C./S.T. (P.A.) Act, Police Station Tadiyawan, District Hardoi, is hereby set aside and reversed.

Let the appellant Javed be released on bail in the Special Complaint Case No. 1027 of 2016, under Sections 376, 452, 323, 504, 506 I.P.C. and Section 3(2)(v) of S.C./S.T. (P.A.) Act, Police Station Tadiyawan, 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.

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.

(Shamim Ahmed, J.)

Order Date :- 11.10.2023/A.Nigam