

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1265 of 2023

Appellant :- Irfan

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

Counsel for Appellant :- Sant Bux Singh, Bajhul Quamar Siddiqui, Sant Bux Singh, Vaibhav Kalia

Counsel for Respondent :- G.A., Brijesh Kumar Pandey, Swatantra Dev

Hon'ble Shamim Ahmed, J.

List of cases has been revised and the case is being taken up in the revised call for hearing.

Heard Sri Vaibhav Kalia, learned counsel for the appellant, Sri Brijesh Kumar Pandey, learned counsel for the opposite party no.2 and Sri Ashok Srivastava, learned A.G.A. for the State.

Learned counsel for the appellant has filed rejoinder affidavit today in the Court which is taken on 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 17.02.2023 passed by learned Special Judge, S.C./S.T. (P.A.) Act / Additional Sessions Judge, Balrampur in Bail Application No.22/2023, Case Crime No.41 of 2023, under Sections 363, 365, 376 I.P.C. and Section 3(2)(V), 3(2)(Va) of S.C./S.T. Act, Police Station Pachpedwa, District Balrampur, whereby the bail application of the appellant has been rejected.

Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case due to enmity and village rivalry. In fact, the prosecutrix and the appellant are in love affairs and were consenting parties. It is admitted by the prosecutrix that she used to talk with the appellant on mobile phone regularly and she went with the appellant to Jagdishpur and stayed there on her own sweet will. The prosecutrix had also admitted in her statement recorded under Section 161 Cr.P.C. that she is aged about 18 years. However, on the pressure created by the police as well as family members of the prosecutrix, she had made an allegation against the appellant regarding forceful physical relation. In her statement recorded under Section 164 Cr.P.C., the prosecutrix had also admitted that she had fled with the appellant earlier also without any pressure created by anyone.

Learned counsel for the appellant further submits that the allegations made by the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. regarding forceful physical relations against the appellant got demolished after perusal of the medical report, wherein the doctor has opined the radiological age of the victim between 19 to 21 years. Even no internal or external mark of injury was found on the person of the victim and the hymen was found to be old, torn and healed up. The medical report of the prosecutrix also indicates pregnancy test as negative and the report is totally silent on the question of forceful sexual assault.

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 27.01.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned counsel for the opposite party no.2 opposed the prayer of bail and submits that there is an allegation against the appellant regarding forceful physical relations by the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C., however, he did not dispute this fact that the prosecutrix had admitted her age to be 18 years in her statements recorded under Sections 161 and 164 Cr.P.C. and in medical report also, the radiological age of the prosecutrix is found to be between 19 to 21 years. However, he submits that as the offence is made out against the appellant, therefore, the appellant is not entitled to be released on bail and his appeal may be dismissed.

Learned A.G.A. for the State has made agreement with the arguments advanced by learned counsel for the opposite party no.2. He submits that the instant appeal being devoid of merits, is liable to be dismissed.

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 also in the absence of any convincing

material to indicate the possibility of tampering with the evidence and considering the fact that the prosecutrix used to talk with the appellant on mobile phone regularly and she went with the appellant to Jagdishpur and stayed there on her own sweet will; the prosecutrix had also admitted in her statement recorded under Section 161 Cr.P.C. that she is aged about 18 years; in her statement recorded under Section 164 Cr.P.C., the prosecutrix had also admitted that she had fled with the appellant earlier also without any pressure created by anyone; the allegations made by the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. regarding forceful physical relations against the appellant got demolished after perusal of the medical report, wherein the doctor has opined the radiological age of the victim between 19 to 21 years; no internal or external mark of injury was found on the person of the victim and the hymen was found to be old, torn and healed up; the medical report of the prosecutrix also indicates pregnancy test as negative and the report is totally silent on the question of forceful 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 17.02.2023 passed by learned Special Judge, S.C./S.T. (P.A.) Act / Additional Sessions Judge, Balrampur in Bail Application No.22/2023, Case Crime No.41 of 2023, under Sections 363, 365, 376 I.P.C. and Section 3(2)(V), 3(2)(Va) of S.C./S.T. Act, Police Station Pachpedwa, District Balrampur is hereby **set aside** and **reversed**.

Let the appellant, **Irfan** be released on bail in the Case Crime No.41 of 2023, under Sections 363, 365, 376 I.P.C. and Section 3(2)(V), 3(2)(Va) of S.C./S.T. Act, Police Station Pachpedwa, District Balrampur 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.

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.

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.

Order Date :- 30.11.2023/Saurabh