

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1480 of 2022

Appellant :- Ajay Kumar Yadav Alias Babu Yadav

Respondent :- State Of U.P Through Principal Secretary And Ors.

Counsel for Appellant :- Dilip Kumar Pandey, Mohd. Zishan, Saleem Ahmad Khan

Counsel for Respondent :- G.A., Mohd. Salman, Mukhtar Ahamad

Hon'ble Shamim Ahmed, J.

1. Heard Mr. Akshat Jameel, Advocate, holding brief of Sri Saleem Ahmad Khan, learned counsel for the appellant; Mr. Mohd. Salman, learned counsel for the opposite party Nos. 2 and 3; Mr. Ashok Srivastava, learned A.G.A., and perused the entire record.

2. 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 30.05.2022 passed by learned Special Judge, S.C./S.T. Act, Raebareli, in Bail Application No.9512022 of 2022, Case Crime No.250 of 2022, under Sections 363/366/376/506 I.P.C. and Section 3(2) (v) of S.C./S.T. Act, Police Station Khero, District Raebareli, whereby the bail application of the appellant has been rejected.

3. Learned counsel for the appellant submits that the appellant is innocent and he has been falsely implicated in the present case. As per the version of the first information report (F.I.R.) and the statements of the prosecutrix recorded under Sections 161 and 164, Cr.P.C. it is not in dispute that the prosecutrix and the appellant are in relationship and there is love-affair between them. Due to this reason the prosecutrix had gone with the appellant to the place without informing her parents and she wants to solemnize marriage with the appellant. It was also admitted by the father of the prosecutrix in the first information report as well as by the prosecutrix that she was in relation with the appellant for the last six months and she used to talk to him on mobile phone.

4. The parents of the prosecutrix came to know about the relations of the prosecutrix and the appellant, thus, they sent the prosecutrix to her maternal house from where the prosecutrix

fled away with the appellant with the intention to marry with him, but as she was about 16 years and on the pressure created by the family members of the appellant marriage could not be solemnized, thus, the appellant dropped the prosecutrix at her maternal house after one week.

5. Learned counsel for the appellant submits that the appellant is ready to marry with the prosecutrix and the prosecutrix is also ready to marry with the appellant, but on the pressure created by the parents and the Police she has made a bald allegation of committing rape against the appellant, whereas whatever physical relation was made, that was made with mutual consent. As the prosecutrix is 16 years as per her own version and from the school certificate, taking advantage of either side of two years, she appears to be the major and she knew the consequences very well. Learned counsel further submits that whatever the allegations of rape was levelled against the appellant in the first information report as well as in the statements recorded under Sections 161 and 164, Cr.P.C., that got demolished after perusal of the medical report, wherein the Doctor in his report has clearly opined that there is no any external or internal injury found on the person of the prosecutrix. All the pathology reports are negative and the Doctor has not given any opinion regarding forceful sexual assault committed on the prosecutrix.

6. It was further argued by learned counsel for the appellant that the appellant has clearly stated in paragraph No. 9 of the affidavit filed in support of the bail-application that the prosecutrix is more than 17 years. This fact has not been denied in the counter affidavit filed by either the A.G.A. or by the counsel for the opposite party No. 2. Thus, the learned counsel submits that the prosecutrix is major and she was in relation with the appellant, and only on the pressure created by the Police and the family members the entire prosecution story has been cooked up against the appellant, with the intention to falsely implicate him and to spoil image of the appellant and his entire family in the society. It is also argued by learned counsel for the appellant that the present F.I.R. has been lodged with the intention to get some financial aid from the State Exchequer, as the appellant belongs to the upper caste and the prosecutrix belongs to S.C./S.T. category.

7. 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, which fact has been stated in para-18 of the affidavit in support of the bail-application, and he is in jail since 15.04.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

8. Mohd. Salman, learned counsel for the opposite party no.2 as well as learned A.G.A. for the State opposed the arguments advanced by the learned counsel for the appellant, and submit that as there is allegation of committing rape with the prosecutrix in her statement recorded under Sections 161 and 164, Cr.P.C. as well as in the first information report, thus, *prima facie* cognizable offence is made out against the appellant, thus, the appellant is not entitled to get any any relief by this Court and the present appeal on his behalf be rejected.

9. 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 as per the version of the first information report (F.I.R.) and the statements of the prosecutrix recorded under Sections 161 and 164, Cr.P.C. it is not in dispute that the prosecutrix and the appellant are in relationship and there is love-affair between them. Due to this reason the prosecutrix had gone with the appellant to the place without informing her parents and she wants to solemnize marriage with the appellant; the father of the prosecutrix in the first information report as well as by the prosecutrix in her statements recorded admitted that she was in relation with the appellant for the last six months and she used to talk to him on mobile phone; it is admitted by the prosecutrix that whatever

physical relation was made, that was made with mutual consent; the allegation of rape got demolished after perusal of the medical report, wherein the Doctor in his report has clearly opined that there is no any external or internal injury found on the person of the prosecutrix. All the pathology reports are negative and the Doctor has not given any opinion regarding forceful sexual assault committed on the prosecutrix; the appellant has stated the prosecutrix to be aged than 17 years, which fact has not been denied in the counter affidavit filed by either the A.G.A. or by the counsel for the opposite party No. 2; the appellant belongs to the upper caste and the prosecutrix belongs to S.C./S.T. category, 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.

10. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 30.05.2022 passed by learned Special Judge, S.C./S.T. Act, Raebareli, in Bail Application No.9512022 of 2022, Case Crime No.250 of 2022, under Sections 363/366/376/506 I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Khero, District Raebareli, is hereby set aside and reversed.

11. Let the appellant, **Ajay Kumar Yadav alias Babu Yadav** be released on bail in the Case Crime No. 250 of 2022, under Sections 363/366/376/506 I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Khero, District Raebareli, 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.

12. 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 :- 30.10.2023

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