

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1562 of 2023

Appellant :- Ram Pher

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home And Another

Counsel for Appellant :- Sanjay Kumar Singh

Counsel for Respondent :- G.A.,Jaikaran

Hon'ble Shamim Ahmed,J.

List has been revised.

Heard Sri Sanjay Kumar Singh, learned counsel for the appellant, Ms. Charu Singh, learned A.G.A. for the State 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 27.01.2023 passed by learned Special Judge, S.C./S.T. Act, Raebareli in Bail Application No.306 of 2023, moved by the appellant in Case Crime No.512 of 2022, under Sections 376-D, 506 I.P.C. and Section 3(2)(5) of S.C./S.T. Act, Police Station Kheron, District Raebareli, whereby the bail application of the appellant has been rejected.

Learned counsel for the appellant has served a written notice upon learned counsel for the opposite party no.2 about mentioning of the case, however, when the case is taken up in the revised call, none appeared on behalf of the opposite party no.2. The said notice is taken on record.

Pleading between the parties have already been exchanged. Since learned counsel for the appellant presses urgency in the matter as the matter pertains to bail, therefore, this Court has no other option but to proceed further in the matter.

Learned counsel for the appellant submitted that the appellant is innocent who has been falsely implicated in this case because of his acquaintance with one of the co-accused Bauwa, in order to exert pressure and wreck vengeance. His further submission is that the victim is major, who is herself complainant. He further submits that conjoint reading of contents of first information report, statement under Sections 161 and 164 Cr.P.C. would reveal that there is a systematic improvement in the prosecution

case with a view to falsely implicate the present appellant.

His further submission is that in a case lodged by mother of co-accused Bauwa, the present appellant happens to be a witness of recovery memo. Drawing attention of this Court towards recovery memo, he submits that in that case, the real brother of the victim was accused, therefore, the present appellant has been implicated in this false case.

His further submission is that the appellant is aged about 40 years as well as he is peace loving resident of village. He has also submitted that the medical report of the victim, if read in totality alongwith the final opinion which is available at page no.42 of the appeal, it would reveal that there was no sign of use of force, however, possibility of sexual violence has not been ruled out. He thus submits that having been a case of gang rape, there ought to have been physical injuries also and in absence of such injuries, it falsified the prosecution case.

He further submitted that there is material contradiction in the statement of the prosecutrix recorded under Sections 161 & 164 Cr.P.C. and version of the first information report. The allegation of committing rape was levelled against the appellant only and thereafter when her statement was recorded under Section 164 Cr.P.C., she has made allegation against three persons, namely, Ram Pher i.e. the present appellant, Surya Bhan @ Suraj Bhan and Virendra @ Bauwa @ Birendra Kumar, which demolished the entire prosecution story. He further submitted that the medical report does not supports the allegation of rape as there is no any injury caused on the person of the deceased, urine pregnancy test was found to be negative and even doctor has not given any opinion regarding sexual assault. The victim is aged about 21 years, as such, she is major. It is a case of counter blast only to give gravity to the offence so that the co-accused, Bauwa may withdraw the case filed against the brother of the victim as he was charge sheeted under Sections 363, 366, 376 I.P.C. in a case lodged by the mother of the co-accused Bauwa and the present appellant is the witness in that case in recovery memo.

He further submitted that co-accused, Virendra @ Bauwa @ Birendra Kumar and Surya Bhan @ Suraj Bhan have already been enlarged on bail by co-ordinate Benches of this Court vide order dated 15.06.2023 and 03.05.2023 passed in Criminal Appeal No.1229 of 2023 and 467 of 2023 respectively. He further submitted that the case of the present appellant is not on the worst footing than that of the co-accused who was assigned the same role, thus, the case of the appellant may also be considered by this Court sympathetically and the appeal be

allowed and appellant be granted bail.

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. The appellant is in jail since 09.11.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial. Criminal history of the appellant has been explained in para 8 of the supplementary affidavit dated 31.07.2023, which is on record.

Learned A.G.A. opposed the prayer for bail and submitted that the appellant has committed a cognizable offence, therefore, he is not entitled to be released on bail, however, she is unable to dispute the other 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 also in the absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that conjoint reading of contents of first information report, statement under Sections 161 and 164 Cr.P.C. would reveal that there is a systematic improvement in the prosecution case with a view to falsely implicate the present appellant; in a case lodged by mother of co-accused Bauwa, the present appellant happens to be a witness of recovery memo; the medical report does not support the allegation of rape as there is no any injury caused on the person of the deceased, urine pregnancy test was found to be negative and even doctor has not given any opinion regarding sexual assault; there appears force in the argument of learned counsel for the appellant that it is a case of counter blast only to give gravity to the offence so that the co-accused, Bauwa may withdraw the case filed against the brother of the victim as he was charge sheeted under Sections 363, 366, 376 I.P.C. in a case lodged by the mother of the co-accused Bauwa 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 27.01.2023 passed by learned Special Judge, S.C./S.T. Act, Raebareli in Bail Application No.306 of 2023, moved by the appellant in Case Crime No.512 of 2022, under Sections 376-D, 506 I.P.C. and Section 3(2)(5) of S.C./S.T. Act, Police Station Kheron, District Raebareli is hereby set aside and reversed.

Let the appellant, **Ram Pher** be released on bail in the Case Crime No.512 of 2022, under Sections 376-D, 506 I.P.C. and Section 3(2)(5) of S.C./S.T. Act, Police Station Kheron, 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.

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 :- 28.10.2023

Saurabh