

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1667 of 2022

Appellant :- Ram Deen Pal

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

Counsel for Appellant :- Chandra Bhanu Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Case is taken up in the revise call.
2. As per the office report dated 12.10.2022 notice has already been served upon the respondent No.2 but till date neither any counsel has appeared nor any counter affidavit has been filed on her behalf.
3. On 05.10.2023, this Court has passed the following order:-

"Learned counsel for the appellant prays for and is allowed one week time to file rejoinder affidavit in reply to the counter affidavit filed by the State-opposite party No.1.

As per Office Report dated 12.10.2022, notice has already been served upon opposite party no.2 personally, but till date neither anyone has put in appearance nor any counter affidavit has been filed on behalf of opposite party No.2.

As a last opportunity ten days and no more time is allowed to the opposite party No.2 to file counter affidavit. Three days, thereafter is allowed to learned counsel for the appellant to file rejoinder affidavit.

Put up this case on 27.10.2023."

4. Today when the case is taken up in the revise call, there is no one present on behalf of opposite party No.2 neither any counter affidavit has been filed, as such, it appears that opposite party No.2 is not interested in contesting this case. Since the matter pertains to bail and learned counsel for the appellant presses urgency in the matter, therefore, this Court has no other option but to proceed for final arguments to decide the present appeal.
5. Heard Sri Chandra Bhanu Singh, learned counsel for the appellant, Sri Ashok Kumar Srivastava, learned A.G.A-I for the State and perused the entire record.

6. This Criminal Appeal under Section 14-A (ii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 23.06.2022 passed by Special Judge (SC/ST Act), Raebareli, in Bail Application No.1199 of 2022 arising out of Case Crime No.0128 of 2021 under Section 376, 323, 504, 506, 452 I.P.C. 3(1)(da), 3(1)(dha) and 3(2)(5) of SC/ST Act, Police Station-Furhatganj, District-Amethi, whereby the bail application of the appellant has been rejected.

7. Rejoinder affidavit filed today in the Court by learned Counsel for the appellant is taken on record.

8. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case due to some financial dispute between the parties. No such incident, as alleged by the prosecution, took place. He further submits that the allegation of committing rape leveled by the prosecutrix against the appellant in the F.I.R. as well as in her statement recorded under Section 161 and 164 Cr.P.C. is false and fabricated. He further submits that the appellant was living as tenant in the house of the prosecutrix and used to take meal in the same house as paying guest and there was some default on the part of the appellant in payment of the rent on time, therefore, the prosecutrix lodged the present F.I.R. only with the intention to gain some financial aid from the State Exchequer as the appellant belongs to upper caste and the prosecutrix belongs to SC/ST category. He further submits that as per the version of the F.I.R., when the alleged incident took place, the son of the prosecutrix, namely-Kuldeep aged about 17 years was sleeping outside the house. He further submits that the son of the prosecutrix in his statement which is annexed as Annexure No.5 to the affidavit filed in support of the bail application, has stated that the appellant was living as tenant in their house for the past few years and the appellant used to take meal as paying guest, he has also stated that he did not know anything about the alleged incident.

9. Learned Counsel for the appellant further submits that Investigating Officer has also recorded the statement of independent witnesses, namely-Hari Shankar, Ori Lal and Ram Kishun, wherein they had mentioned that there was some dispute between the parties regarding a financial transaction and they have not supported the prosecution story as alleged by the prosecutrix.

10. He further submits that the allegation of rape got demolished after perusal of the medical report, wherein, the Doctor in his report has clearly indicated that there was no sign

of struggle seen, no injury seen on genitalia, no injury seen on any part of the body of the prosecutrix, however, final diagnosis is pending till all reports are available, this fact has also been confirmed by learned A.G.A-I for the State. He further submits that the prosecutrix was aged about 48 years, thus, she was major at the time of incident. He further submits that recovery of mobile phone and undergarments of the appellant recovered from the house of the appellant appears to be planted as the appellant is a tenant in the house of the prosecutrix, therefore, his entire belongings are present in the house of the prosecutrix, these recoveries have been shown only with the intention to develop her case, thus, he submits that it is case of false implication only with an intention to defame the appellant and his entire family in the society.

11. 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 22.04.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

12. Learned A.G.A-I has opposed the prayer for bail, however, he is unable to dispute the contentions raised by learned counsel for the appellant.

13. 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 appellant was living as tenant in the house of the prosecutrix and used to take meal in the same house as paying guest and there was some default on the part of the appellant in payment of the rent on time, therefore, the prosecutrix lodged the present F.I.R. only with the intention to gain some financial aid from the State Exchequer as the appellant belongs to upper caste and the prosecutrix belongs to SC/ST category and also considering the fact that the Doctor in his report has clearly indicated that there was no sign of struggle seen, no injury seen on genitalia, no injury seen on any

part of the body of the prosecutrix, however, final diagnosis is pending till all reports are available, this fact has also been confirmed by learned A.G.A-I for the State and her age was found to be 48 years and also taking note of the fact that that recovery of mobile phone and undergarments of the appellant recovered from the house of the appellant appears to be planted as the appellant is a tenant in the house of the prosecutrix, therefore, his entire belongings are present in the house of the prosecutrix, these recoveries have been shown only with the intention to develop her case 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.

14. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 23.06.2022 passed by Special Judge (SC/ST Act), Raebareli, in Bail Application No.1199 of 2022 arising out of Case Crime No.0128 of 2021 under Section 376, 323, 504, 506, 452 I.P.C. 3(1)(da), 3(1)(dha) and 3(2)(5) of SC/ST Act, Police Station-Furshatganj, District-Amethi is hereby **set aside** and **reversed**.

15. Let the appellant, **Ram Deen Pal** be released on bail in the Case Crime No.0128 of 2021 under Section 376, 323, 504, 506, 452 I.P.C. 3(1)(da), 3(1)(dha) and 3(2)(5) of SC/ST Act, Police Station-Furshatganj, District-Amethi 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.

16. 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.

17. 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 :- 27.10.2023

Piyush/-