

Neutral Citation No. - 2023:AHC-LKO:68980

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1754 of 2023

Appellant :- Ajay

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

Counsel for Appellant :- Sushil Kumar Misra

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. The case is taken up in the revised call.
2. Heard Sri Sushil Kumar Misra, the learned counsel for the appellant as well as Ms. Charu Singh, the learned A.G.A. for the State-opposite party No. 1 and perused the entire record.
3. As per the office report dated 03.07.2023 notice has already been served upon the opposite party No. 2 and 3 but till date neither any counsel has appeared on behalf of opposite party No. 2 and 3 nor counter affidavit has been filed on her behalf. Thereafter, this Court vide order dated 27.07.2023 passed the following order:

“Learned A.G.A. submits that his counter affidavit is under preparation. He prays for and is allowed ten days' and no more time to file counter affidavit.

As per the office report dated 03.07.2023 notice has already been served upon the opposite party Nos. 2 & 3, but till date neither any counsel has appeared nor any counter affidavit has been filed on their behalf.

As a last opportunity, ten days' and no more time is allowed to the opposite party Nos. 2 & 3 to file counter affidavit. Three days, thereafter, is allowed to the learned counsel for the appellant to file rejoinder affidavit.

Put up this case on 23.08.2023 before appropriate Court.
”

4. Learned A.G.A. has filed counter affidavit and in reply thereto learned counsel for the appellant has filed rejoinder affidavit.

5. Today when the case is taken up, neither any counsel has appeared on behalf of opposite party No. 2 nor counter affidavit has been filed on her behalf. It appears that the opposite party No.2 is not interested to file any counter affidavit.

6. In the above circumstances, as the matter pertains to bail this Court has no option but to proceed for final arguments to decide the present appeal.

7. The present criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 06.05.2023 passed by the Court of Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Lucknow in Bail Application No. 3807/2023 CNR No. UPLK010086792023, arising out of Case Crime No. 72/2023, under Sections 363, 366 I.P.C. and Section 3 (2) (v) SC/ST Act, Police Station Dubagga, District Lucknow, whereby the bail application of the appellant has been rejected.

8. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case due to enmity and village party bandi. No such incident took place as alleged by the prosecution.

9. Learned counsel for the appellant further submits that initially the F.I.R. was lodged by the father of the victim that the daughter of the complainant was enticed away on 26.03.2023. Thereafter the statement of the prosecutrix was recorded under Section 161 Cr.P.C. in which she has admitted this fact that on 26.03.2023 she went from her house without informing any body and thereafter she called the appellant, as she was in love affairs with the appellant and they want to marry each other, but they could not solemnize the marriage.

10. Learned counsel for the appellant further submits that the prosecutrix in her statement recorded under Section 164 Cr.P.C. has almost repeated the version of the F.I.R. and stated that the appellant has not made any physical relation with her. He further submits that the prosecutrix has refused for her medical examination. The report of the doctor is filed as Annexure CA-7 to the counter affidavit filed by the learned A.G.A.. Thus, in absence of medical examination, it cannot be said that the wrong act has been done by the applicant.

11. Learned counsel for the appellant further submits that the prosecutrix belongs to lower caste and the appellant is of upper caste

and only to gain financial aid from the State Exchequer, the present F.I.R. has been lodged.

12. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 02.04.2023, who has no previous criminal history, and in case the appellant is enlarged on bail, he shall not misuse the liberty of bail and he shall also fully cooperate with the trial. He has further submitted that there is no possibility of the appellant to intimidate or pressurize the witnesses or any other persons acquainted with the facts of the present case.

13. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 06.05.2023 passed by the Court of Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Lucknow in Bail Application No. 3807/2023 CNR No. UPLK010086792023, arising out of Case Crime No. 72/2023, under Sections 363, 366 I.P.C. and Section 3 (2) (v) SC/ST Act, Police Station Dubagga, District Lucknow deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

14. 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 02.04.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

15. Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that there is active participation of accused/appellant in the crime. Therefore, the accused/ appellant is not entitled to be enlarged on bail and the instant criminal appeal deserves to be dismissed. However, he has been unable to dispute the other factual submissions advanced by the learned counsel for the accused/appellant.

16. 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, unlikelihood of early conclusion of trial and also in absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that there appears force in the argument of learned counsel for the appellant that the the prosecutrix in her statement recorded under Section 161 Cr.P.C. has admitted this fact that on 26.03.2023 she went from her house without informing any body and thereafter she called the appellant, as she was in love affairs with the appellant, thus parties are consenting parties and there also appears force in the argument of learned counsel for the appellant that the prosecutrix in her statement recorded under Section 164 Cr.P.C. has almost repeated the version of the F.I.R. and stated that the appellant has not made any physical relation with her and has refused for her medical examination, thus in absence of medical examination, it cannot be said that the wrong act has been done by the applicant further considering the fact that appellant is in jail since 02.04.2023 and has now by done a substantial period of detention 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, impugned order passed by the trial court is liable to be set aside.

17. Accordingly, the appeal is **allowed**. Consequently, the order dated 06.05.2023 passed by the Court of Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Lucknow in Bail Application No. 3807/2023 CNR No. UPLK010086792023, arising out of Case Crime No. 72/2023, under Sections 363, 366 I.P.C. and Section 3 (2) (v) SC/T Act, Police Station Dubagga, District Lucknow is hereby **reversed** and **set aside**.

18. Let the appellant, **Ajay**, be enlarged on bail in Case Crime No. 72/2023, under Sections 363, 366 I.P.C. and Section 3 (2) (v) SC/T Act, Police Station Dubagga, District Lucknow 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.

19. 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.

20. The trial court is also directed to expedite the trial of the aforesaid case, within a period of one year from today, 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 :- 11.10.2023

Arvind