

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1692 of 2022

Appellant :- Siraj

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

Counsel for Appellant :- Pawan Kumar Singh, Anjali Dubey, Rajiv Mishra, Soniya Mishra, Soni Pathak

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. This case is taken up in the revised list.
2. Learned counsel for the appellant as well as the learned A.G.A. are present.
3. None is present for the opposite party No. 2.
4. This court vide order dated 18.7.2023 had issued notice to the opposite party No. 2. As per office report dated 18.9.2023 neither unserved notice nor the Acknowledgement Due (A.D.) has been received back. Thereafter this Court on 19.9.2023 passed the following order:

“Learned A.G.A. has already filed counter affidavit after serving copy of the same to learned counsel for the appellant. The same is available on record.

Learned counsel for the appellant prays for and is allowed ten days time to file rejoinder affidavit.

The opposite party No.2 is also granted ten days and no more time to file counter affidavit. Three days, thereafter is allowed to learned counsel for the appellant to file rejoinder affidavit.

Put up this case on 16.10.2023.”

5. Today also when the case is taken up in the revised list, neither any Advocate is present for the opposite party No. 2 nor any counter affidavit has been filed on his behalf. It appears that the opposite party No. 2 is not interested in pursuing this case.

6. Learned counsel for the appellant states that it is a bail matter and is pending since July, 2022. In these circumstances, this Court has no other option, but to proceed to hear the matter finally.

7. Heard Ms. Soniya Mishra, learned counsel for the appellant, Sri H.S. Bajpai, A.G.A. for the State and perused the entire record.

8. 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 27.05.2022 passed by learned Special Judge, S.C./S.T. Act, Barabanki in Bail Application No.1193 of 2022, Case Crime No. 0078 of 2022, under Sections 376, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Ghunghter, District Barabanki, whereby the bail application of the appellant has been rejected.

9. Learned counsel for the appellant has submitted that the appellant is innocent and he has been falsely implicated in the present case. The complainant is father of the victim. No such incident, as alleged by the complainant in the first information report (F.I.R.), ever took place nor any forceful physical assault was made by the appellant. When the statements of the victim were recorded under Section 161 and 164, Cr.P.C., she admitted this fact that she as well as the appellant were in relation and the appellant had promised for marriage, but the family members of the appellant were opposing the marriage, because the appellant belongs to other religion and the victim belongs to other religion. The victim in her statement recorded under Section 161, Cr.P.C. has not made any allegation of physical assault, but in her statement recorded under Section 164, Cr.P.C. she has stated that the mother and father of the appellant were not ready for marriage and they threatened her with dire

consequences and also beaten her. Thereafter, the appellant took her and committed physical assault near the bushes.

10. Learned counsel for the appellant has also submitted that the allegation of physical assault, as stated by the victim in her statement recorded under Section 164, Cr.P.C., has been given on the pressure created by the Police and the complainant, who is her father. In fact, no such incident had ever taken place. He has also placed much emphasis on the statement of the villagers, who were the independent witness, namely, Arun Pandey, Ambika Prasad, Smt. Ragini Rawat and Ram Niwaz. They have only stated that fact that the victim had come in the house of the appellant, but they not stated that any forceful physical assault was made by the appellant on her. Learned counsel for the appellant further submits that as per the medical-report the prosecutrix is 19 years of age and the Doctor has not given an opinion about sexual assault. As per opinion of the Doctor, it has been opined that no definite opinion can be given on sexual assault, based on physical examination and pathological report. It was also opined from the pathological-report of D.W.H., Barabanki, given smear slides are negative for spermatozoa and gonococci. No external or internal injury is present on the person of the prosecutrix. Thus, the counsel submits that allegation of committing physical assault by the appellant got demolished after perusal of the medical-report. He further submits that the appellant's name was taken due to political rivalry and also with the intention to get some financial aid from the State Exchequer, as the appellant is of the Upper Caste and the alleged victim belongs to SC/ST Category.

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 13.04.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

12. Sri H.S. Bajpai, learned A.G.S. opposed the prayer for bail, stating that there is allegation against the appellant that he has tried to marry the victim forcefully, thus, commission of offence is made out, thus, the appeal be rejected and the appellant is not entitled to get any benefit by this Court, 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 that there are various contradictions in the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C as in her statement recorded under Section 161, Cr.P.C. the alleged victim has not made any allegation of physical assault, but in her statement recorded under Section 164, Cr.P.C. she has stated the appellant took her and committed physical assault near the bushes; the villagers, who were the independent witness, have only stated that the

victim had come in the house of the appellant, but they have not stated that any forceful physical assault was made by the appellant on her; the Doctor has not given an opinion about sexual assault; as per opinion of the Doctor, no definite opinion can be given on sexual assault; smear slides were negative for spermatozoa and gonococci; no external or internal injury was found present on the person of the prosecutrix; the appellant is of the Upper Caste and the alleged victim belongs to SC/ST Category, so there is possibility of trying to take benefit from the State Exchequer; 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 judgment and order dated 27.05.2022 passed by learned Special Judge, S.C./S.T. Act, Barabanki in Bail Application No.1193 of 2022, Case Crime No. 0078 of 2022, under Sections 376, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Ghunghter, District Barabanki, is hereby set aside and reversed.

15. Let the appellant, **Siraj** be released on bail in the Case Crime No. 0078 of 2022, under Sections 376, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Ghunghter, District Barabanki, 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. 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 :- 2.11.2023

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