

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1817 of 2023

Appellant :- Shailendra Yadav

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

Counsel for Appellant :- Rakesh Kumar Verma, Km. Pratibha Vaish, Saurabh Srivastava

Counsel for Respondent :- G.A., Uma Kant Gupta

Hon'ble Shamim Ahmed, J.

1. Heard learned counsel for the appellant; Sri Mukesh Kumar, Advocate, holding brief of Sri Uma Kant Gupta, learned counsel for the opposite party no.2 as well as Sri Ajai Kumar Agnihotri, learned A.G.A. for the State and perused the entire record.

2. This Criminal Appeal under Section 14-A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'S.C./S.T. Act') has been preferred against the impugned order dated 18.05.2023 passed by learned Special Judge, S.C./S.T. Act, Raebareli, in Second Bail Application No. 1700 of 2023, Shailendra Yadav v. State of U.P., in Case Crime No. 9 of 2023, under Sections 376, 323, 504, 506, 328, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Dalmau, 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 due to enmity and village party-bandi. No such incident, as alleged by the prosecutrix, ever took place. The entire allegations leveled in the first information report are false and fabricated. In fact, the appellant used to take the children of the prosecutrix to school by his van. Except this, he had no other concern with the prosecutrix. Learned counsel further submits that the rent of the appellant was due on the husband of the prosecutrix and on its demand, the husband of the prosecutrix entered into conversation and in this regard a challani-report under Section 107/116/151, Cr.P.C. was registered against the appellant and the husband of the prosecutrix was exonerated by

the Police. Thereafter, due to this incident, the husband of the prosecutrix was annoyed with the appellant and he was in search of right time to implicate him and the present F.I.R. is only the result of that annoyance. This F.I.R. has been lodged with a delay of more than 3 months, on 12.1.2023 in respect of the alleged incident dated 10.10.2022, and no plausible explanation regarding the delay has been given by the prosecutrix.

4. Learned counsel further submits that the present F.I.R. has been lodged to settle score from the appellant, even though it has been after much delay and also with the intention to get some financial benefit from the State Exchequer, as the appellant belongs to 'upper caste' and the prosecutrix is a member of 'Scheduled Caste' category.

5. It has been further argued that in her statements recorded under Sections 161 and 164, Cr.P.C. the prosecutrix has repeated almost the same version of the first information report, thus, it appears that a cyclostyle statement has been given by the prosecutrix, only with the intention to falsely implicate the appellant.

6. The learned counsel further submits that the entire allegation of committing rape got demolished after perusal of the medical report, as the doctor has clearly opined that there is no any external or internal injury seen at the time of examination on 14.1.2023. The Doctor also opined the incident is 3 months ago, thus, no definite opinion can be given about the sexual assault, thus, the learned counsel submits that the entire story as narrated by the prosecutrix appears to be false and fabricated, and the F.I.R. has been lodged only with the intention to falsely implicate the appellant.

7. It has been further argued by the learned counsel for the appellant that the appellant is a law abiding citizen, having no criminal history and he is in detention since 20.1.2023 and he has already undergone substantial period of detention. This fact has also been stated in para-13 of the affidavit filed in support of the bail-application. He prays that the instant appeal be allowed.

8. 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 20.01.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

9. Learned A.G.A. Sri Ajai Kumar Agnihotri as well as Sri Mukesh Kumar, Advocate, holding brief of Sri Uma Kant Gupta, learned counsel for the opp. Party has opposed the prayer for bail and submitted that as per the statement of the prosecutrix and version of the F.I.R., cognizable offence is made out, thus, the appeal be rejected.

10. After considering the arguments as advanced by the learned counsel for the parties and perusing the records available before me, I find force in the arguments of the learned counsel for the appellant that there were certain issues between the husband of the opposite party No. 1 and the appellant and the husband has tried to settle the score from the appellant by lodging the present F.I.R. through his wife/opp. Party No. 2. The F.I.R. has been lodged with a delay of more than 3 months, on 12.1.2023 in respect of the alleged incident dated 10.10.2022, and no plausible explanation regarding the delay is there in the F.I.R. The F.I.R. appears to have been lodged with the intention to settle score from the appellant and to get some financial benefit from the State Exchequer, as the appellant belongs to 'upper caste' and the prosecutrix is a member of 'Scheduled Caste' category. In her statements recorded under Sections 161 and 164, Cr.P.C. the prosecutrix has repeated almost the same version of the first information report, thus, it appears that a cyclostyle statement has been given by her, only with the intention to falsely implicate the appellant. The doctor has clearly opined that there is no any external or internal injury seen at the time of examination on 14.1.2023. The Doctor also opined the incident is 3 months ago, thus, no definite opinion can be given about the sexual assault, thus, entire story as narrated by the prosecutrix appears to be false and fabricated,

and the F.I.R. appears to have been lodged only with the intention to falsely implicate the appellant. The appellant is having no criminal history and he is in detention since 20.1.2023 and he has already undergone substantial period of detention. This fact has also been stated in para-13 of the affidavit filed in support of the bail-application.

11. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 18.05.2023 passed by learned Special Judge, S.C./S.T. Act, Raebareli, in Second Bail Application No. 1700 of 2023, Shailendra Yadav v. State of U.P., in Case Crime No. 9 of 2023, under Sections 376, 323, 504, 506, 328, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Dalmau, District Raebareli, is hereby set aside and reversed.

12. Let the appellant, **Shailendra Yadav** be released on bail in the Case Crime No. 9 of 2023, under Sections 376, 323, 504, 506, 328, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Dalmau, 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.

13. 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.

14. 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.

(Shamim Ahmed, J.)

Order Date :- 19.12.2023

A.Nigam