

Court No. - 15

Case :- CRIMINAL APPEAL No. - 886 of 2020

Appellant :- Vishal Yadav

Respondent :- State Of U.P. And Anr.

Counsel for Appellant :- Mohd. Salman, Amarnath Singh Baghel, Devendra Pratap, Mohd. Zishan, O.P. Tiwari, Piyush Kumar Singh, Raj Narayan Singh, Suresh Pratap Singh, Vivek Tiwari

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. Learned counsel for the appellant submits that the matter pertains to bail and the appellant is in detention since 18.07.2020 and has already undergone substantial period of detention, thus, this application be heard finally.
2. This Court had issued notice to the opposite party No. 2/informant on 30.09.2020, but till date, in spite of service of notice up her, no counter affidavit has been filed on her behalf nor any counsel has put in appearance to press her case. It appears that the opposite party No. 2 is not interested to contest the case.
3. A.G.A. has filed counter-affidavit and in reply thereof rejoinder-affidavit has also been filed by the appellant, which are available on record.
4. In view of the above, this court is left with no other option, but to consider this appeal.
5. Heard Sri O.P. Tiwari, learned counsel for the appellant as well as Sri Bhaskar Mall, learned A.G.A. for the State/opp. party No. 1 and perused the entire record.
6. 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 2.9.2020 passed by learned Special Judge, S.C./S.T. Act/Addl. Sessions Judge (Court No. 2), Unnao, in Bail Application No. 947 of 2020, Vishal Yadav v. State, in Case Crime No. 170 of 2020, under Sections 376, 323, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Achalganj, District Unnao, whereby the bail application of the appellant has been rejected.

7. 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-bandh. The appellant and the complainant are neighbours and their agricultural fields as well as mango-groves are simultaneously adjacent. The complainant's husband and her children used to pluck mangoes from the mango-grove of the appellant and they also send their cattle in the appellant's agricultural field, which disturb the crops and when the mother the appellant interfered, husband of the opp. Party No. 2 got annoyed and on 1.7.2020 he also beaten the appellant. In this regard, complaint dated 1.7.2020 was made before the Choki Incharge Nevarna, P.S. Achalganj, District Unnao, a copy of the said complaint is also filed as Annexure No. 3 to the affidavit, filed in support of the bail application. Thereafter, a compromise was also entered between the parties with the help of the Police. A copy of the compromise is also filed as Annexure No. 4 to the said affidavit.

8. Learned counsel further submits that being annoyed by the incident dated 1.7.2020 and the compromise, the husband of the opp. Party No. 2 was inimical to the appellant and his family members and he brought forward his wife and the present case was lodged against the appellant regarding sexual assault, which is totally false and baseless. As per the version of the first information report, the elder son of the prosecutrix, aged about 15 years, was sleeping with her in the house, thus, it is not possible that the appellant might commit any crime or made physical relation with the opp. party No. 2 forcefully. It is also argued that there no any independent witness to support the allegation of the prosecutrix, whereas she has stated in the first information report as well as in her statements recorded under Sections 161 and 164, Cr.P.C. that after she made the hue and cry, villagers came for her rescue, but statement of none of the villagers was recorded. That also falsify the entire prosecution story.

9. It was further argued by the learned counsel for the appellant that there are material contradictions in the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C. as well as in the version of the F.I.R. He further submits that the medical report also does not support the allegation of rape nor any internal injury was seen. Two injuries were seen by the Doctor on external part, which were by hard and blunt object.

These injuries might be due to the incident, which happened on 1.7.2020. The appellant also received injuries in that incident. Thus, the allegation as levelled by the opposite party No. 2 is only with the intention to falsely implicate the appellant and his entire family in the alleged false incident.

10. 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 18.07.2020 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

11. Sri Bhaskar Mall, the learned A.G.A. has opposed the prayer for bail and submitted that the appellant is involved in a heinous crime. He also submits that *prima facie* offence is made out, thus, the appel be rejected.

12. After considering the arguments as advanced by the learned counsel for the parties and perusing the records available before me, I find force I the arguments of the learned counsel for the appellant that the appellant and the complainant are neighbours and their agricultural fields as well as mango-groves are simultaneously adjacent. Thus, they had pity issues against each-other. On 1.7.20202 the husband of the opp. party No. 2 had beaten the appellant. In this regard, complaint dated 1.7.2020 was made before the Choki Incharge Nevarna, P.S. Achalganj, District Unnao. A compromise was also entered between the parties with the help of the Police. Because of the incident dated 1.7.2020 and the compromise, the husband of the opp. party No. 2 was inimical to the appellant and his family members and he brought forward his wife and the present case was lodged against the appellant regarding sexual assault. As per the version of the first information report, the elder son of the prosecutrix, aged about 15 years, was sleeping with her in the house, thus, it is not possible that the appellant might

commit any crime or made physical relation with the opp. party No. 2 forcefully. There is no any independent witness to support the allegation of the prosecutrix, whereas she has stated in the first information report as well as in her statements recorded under Sections 161 and 164, Cr.P.C. that after she made the hue and cry, villagers came for her rescue. This also falsify the entire prosecution story. There are material contradictions in the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C. as well as in the version of the F.I.R. Medical report also does not support the allegation of rape nor any internal injury has been seen. Only two injuries were seen by the Doctor on external part, which were by hard and blunt object. These injuries might be due to the incident, which happened on 1.7.2020. The appellant also received injuries in that incident. Thus, the allegation as levelled by the opposite party No. 2 is only with the intention to falsely implicate the appellant and his entire family in the alleged false inicdent.

13. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 2.9.2020 passed by learned Special Judge, S.C./S.T. Act/Addl. Sessions Judge (Court No. 2), Unnao, in Bail Application No. 947 of 2020, Vishal Yadav v. State, in Case Crime No. 170 of 2020, under Sections 376, 323, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Achalganj, District Unnao, is hereby set aside and reversed.

14. Let the appellant, **Vishal Yadav** be released on bail in the Case Crime No. 170 of 2020, under Sections 376, 323, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Achalganj, District Unnao, 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.

15. 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.

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.

(Shamim Ahmed, J.)

Order Date :- 20.12.2023/A.Nigam