

Court No. - 12

Case :- CRIMINAL APPEAL No. - 2035 of 2023

Appellant :- Rahul Kumar Nishad

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

Counsel for Appellant :- Sachin Upadhyay, Pradeep Kumar Mishra, Shivendra S Singh Rathore

Counsel for Respondent :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the appellant, learned A.G.A. for the State and perused the entire record.
2. It is evident from the record that the notice has already been served on the private respondent, but none has put in appearance on her behalf.
3. The present criminal appeal under Section 14-A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 23.05.2023 passed by the Court of Special Judge, S.C./S.T. (P.A.) Act, Unnao in Case Crime No. 73 of 2023, under Sections 376-D, 323, 506 I.P.C. and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Gangaghat, District Unnao, whereby the bail application of the appellant has been rejected.
4. Learned counsel for the appellant submits that appellant has falsely been implicated in the present case. No such incident, as alleged by the prosecution, took place.
5. Learned counsel for the appellant further submits that the F.I.R. dated 15.02.2023 was lodged by the prosecutrix herself regarding an incident of the same day under Sections 376-D, 323 I.P.C. against one Sanjay and two unknown persons wherein name of appellant was not mentioned in the F.I.R.
6. Learned counsel for the appellant further submits that as

per the allegations made in the F.I.R. the prosecutrix herself admitted this fact that she is a dancer and she was invited to perform her dance in a function. She has named one Shalu and Sanjay in the F.I.R. that they have taken her by a vehicle in jungle where her rape was committed upon by three persons including Sanjay.

7. Learned counsel for the appellant further submits that statement of prosecutrix was also recorded under Section 161 Cr.P.C. in which she has also repeated the same version of the F.I.R. and has made allegation of rape against Sanjay and two other unknown persons. The name of appellant does not find place in the statement of prosecutrix recorded under Section 161 Cr.P.C.

8. Learned counsel for the appellant further submits that in her statement recorded under Section 164 Cr.P.C. the prosecutrix has not made allegation against the appellant and has made allegation against Sanjay and two other persons. In two other persons the appellant is neither there, nor he has committed any such type of crime.

9. Learned counsel for the appellant further submits that medical report of the prosecutrix also does not support the allegation of rape, whereas as per her medical report no external injury was seen at the time of examination, NAD normal absent no any internal perineal injury seen at the time of examination. The age of the prosecutrix was found to be 22 years.

10. Learned counsel for the appellant further submits that as the role assigned to the appellant is also same and common as has been assigned to the co-accused Pankaj Nishad and Ajay Kumar @ Sahil Nishad, who have been granted bail by this Court vide orders dated 12.07.2023 and 17.10.2023 passed in Criminal Appeal Nos. 1332 of 2023 and 1994 of 2023 respectively, therefore, the appellant is also entitled to get the benefit of parity and be enlarged on bail, his case is not on the worst footing than that of the other co-accused, who has been already

granted bail by this Hon'ble Court.

11. Learned counsel for the appellant further submits that in the counter affidavits filed by the learned A.G.A. no new ground has been made and only repetition of version of F.I.R. as well as of the statements of prosecutrix recorded under Sections 161 & 164 Cr.P.C. has been mentioned. It has further been argued that appellant has neither any connection with the prosecutrix, nor she knew the appellant. The entire allegation is false. The appellant has been falsely implicated by the police at the instance of prosecutrix and the pressure created by her family members, therefore, prayer for bail of the appellant may be considered sympathetically and he should be enlarged on bail by this Court. Consequently the impugned order dated 23.05.2023 by the Court of Special Judge, S.C./S.T. (P.A.) Act Unnao may be set aside and the present appeal may be allowed.

12. 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 having no previous criminal antecedent into his credit and he is in jail since 27.03.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

13. Learned A.G.A. submits that though name of appellant is not mentioned in the F.I.R., even in the statements of prosecutrix recorded under Sections 161 & 164 Cr.P.C. only the name of one Sanjay was taken by the prosecutrix, and

the name of appellant came into light when the police arrested the appellant on the information given by informer, but as the appellant is involved in a heinous crime his bail application may be rejected and the appeal may be dismissed accordingly.

14. 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 absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that initially F.I.R. was lodged by the prosecutrix herself against one Sanjay and two unknown persons wherein name of appellant was not mentioned in the F.I.R. and she named one Shalu and Sanjay that they have taken her by a vehicle in jungle where her rape was committed upon by three persons including Sanjay; the prosecutrix in her statement recorded under Section 161 Cr.P.C. has repeated the same version of the F.I.R. and has made allegation of rape against Sanjay and two other unknown persons wherein name of appellant does not find place; in her statement recorded under Section 164 Cr.P.C. the prosecutrix has not made allegation against the appellant and has made allegation against Sanjay and two other persons, the medical report of the prosecutrix also does not support allegation of rape, whereas as per her medical report no external injury was seen at the time of examination, NAD normal absent no any internal perineal injury seen at the time of examination and the age of the prosecutrix was found to be 22 years; and considering that similarly circumstanced and identically placed co-accused Pankaj Nishad and Ajay Kumar @ Sahil Nishad have already been granted bail by this Court 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 and the impugned order passed by the court below is liable to be set aside.

15. Accordingly, the appeal is allowed. Consequently, the impugned order dated 23.05.2023 passed by the Court of Special Judge, S.C./S.T. (P.A.) Act, Unnao in Case Crime No. 73 of 2023, under Sections 376-D, 323, 506 I.P.C. and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Gangaghat, District Unnao is hereby reversed and set aside.

16. Let the appellant, Rahul Kumar Nishad, be enlarged on bail in Case Crime No. 73 of 2023, under Sections 376-D, 323, 506 I.P.C. and Section 3(2)5 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Gangaghat, 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.

17. 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 :- 26.10.2023

VKS