

Neutral Citation No. - 2023:AHC-LKO:71643

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2326 of 2022

Appellant :- Mukhtar Ansari @ Mukhtar Ali

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

Counsel for Appellant :- Lalji Prasad Shukla, Rohit Singh Parmar

Counsel for Respondent :- G.A., Vivek Chandra

Hon'ble Shamim Ahmed, J.

1. Heard Sri Rohit Singh Parmar, learned counsel for the appellant as well as Sri Himanshu Shukla, Advocate holding brief of Sri Vivek Chandra, learned counsel for the opposite party No.2 and Sri Hari Shanker Bajpai, learned A.G.A. for the State and perused the record.
2. Learned A.G.A. has filed counter affidavit and in reply thereto learned counsel for the appellant has filed rejoinder affidavit.
3. Sri Himanshu Shukla, Advocate holding brief of Sri Vivek Chandra, learned counsel for the opposite party No.2 submits that his client is not turning up to file counter affidavit in spite of information to him, thus he submits that he does not propose to file any counter affidavit and he will argue the case in absence of counter affidavit.
4. 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.
5. 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 13.09.2022 passed by the Court of learned Special Judge (SC/ST Act), Sitapur in Bail Application No. 422 of 2022, under Section 376 I.P.C. and Section 3(2) V of SC/ST Act, F.I.R. No. 0363/22, Police Station Ramkot District Sitapur, whereby the bail application of the appellant has been rejected.
6. 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 prosecutrix in the F.I.R. The F.I.R. has been lodged only with

the intention to defame the image of the appellant and his entire family in the society.

7. Learned counsel for the appellant further submits that in the F.I.R. there is an allegation of rape levelled against the appellant against the prosecutrix while she was returning from the school in the Van. The same statement was repeated by the prosecutrix in her statement recorded under Section 161 and 164 Cr.P.C. with some contradiction.

8. Learned counsel for the appellant has put much emphasis on the statement of the PW-2 father of the prosecutrix recorded before the court below on 16.05.2023, in which the father of the prosecutrix has admitted this fact that there is an old enmity with the appellant in respect of election of Gram Pradhan, wherein the father of the prosecutrix was supporter of the Pradhan, who won the election and the appellant was the supporter of the candidate, who lost the said election. It is also admitted by the father of the prosecutrix that there is enmity with the appellant and for this reason, his daughter, his wife and his son have beaten the appellant and also destroyed the motorcycle of the appellant. It is also admitted by the father of the prosecutrix that there is a good relation with the appellant for the last two to three years and the appellant used to come to their house and also took them for “mundan” and other religious activities with his Van. He also admitted this fact that there is enmity going on with the appellant and earlier also one case was registered on IGRS Portal by the prosecutrix which was later on compromised with the help of the police. It was also admitted by the father of the prosecutrix that she some time used to travel in the van of the appellant while going to the school, thus learned counsel for the appellant submits that it is a case of political vendeta and also a counter blast with the intention to falsely implicate the appellant in the present case, no such incident took place, as alleged by the prosecutrix. The appellant was not present on the spot on the date of alleged incident. The father of the prosecutrix also admitted this fact that after this dispute, the present F.I.R. has been lodged, just after three days. The copy of the statement of the father of the prosecutrix, namely, Sanjay, recored before the court below dated 10.05.2023 and 16.05.2023 have been annexed with the rejoinder affidavit as Annexure RA-2 at page 37 to 39, which is already on record.

9. Learned counsel for the appellant further submits that as the enmity was going with the appellant for long time and the appellant belongs to upper caste and the prosecutrix belongs to SC/ST category and the prosecutrix has lodged the present F.I.R. only to get some financial aid from the State Exchequer, thus the motive is very much clear on the instance of her father.

10. Learned counsel for the appellant further submits that the entire allegation as levelled against the appellant by the prosecutrix got demolished after perusal of the medical report, wherein the doctor in his medical report has clearly opined that there is no sign of use of force, there are no sign of any force or penetration injury found regarding sexual violence; sexual violence cannot be ruled out and till date there is no any laboratory test to ascertain the fact that the rape has been committed by the appellant. Further, one injury was mentioned by the doctor, behind the ear, which may be caused due to some other reason, but not by the present appellant.

11. Learned counsel for the appellant further submits that if the allegation of the prosecutrix is taken to be true that appellant after committing rape the appellant has thrown the prosecutrix, she must have received serious injuries. The medical report is totally silent on this point, thus the prosecution story appears to be totally false and lodged with enmity and with mala fide intention.

12. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 24.07.2022 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. 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 24.07.2022 and that in the

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

14. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 13.09.2022 passed by the Court of learned Special Judge (SC/ST Act), Sitapur in Bail Application No. 422 of 2022, under Section 376 I.P.C. and Section 3(2) V of SC/ST Act, F.I.R. No. 0363/22, Police Station Ramkot District Sitapur deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

15. Per contra, Sri Himanshu Shukla, Advocate holding brief of Sri Vivek Chandra, learned counsel for the opposite party No.2 and Sri Hari Shanker Bajpai, learned A.G.A. for the State have vehemently opposed the prayer by submitting that as there is an allegation against the appellant, but have not disputed this fact that the father of the prosecutrix has admitted the enmity with the appellant before the court below when his statement was recorded on 10.05.2023 and 16.05.2023 and has also admitted this fact that daughter, the mother and the son of the PW-2 have beaten the appellant badly and also destroyed the motor cycle and the present F.I.R. has been lodged, just after the alleged incident, but have submitted that as prima facie offence is made out the appellant is not entitled to get any relief by this Court.

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 father of the prosecutrix has admitted this fact that there is an old enmity with the appellant in respect of election of Gram Pradhan, wherein the father of the prosecutrix was supporter of the Pradhan, who won the election and the appellant was the supporter of the candidate, who lost the said election, thus it is a case of political vendeta and also a counter blast with the intention to falsely implicate the appellant in the present case and old enmity was also admitted by the PW-2, father of the prosecutrix; there also appears force in the argument of learned counsel for the appellant that the

entire allegation as levelled against the appellant by the prosecutrix got demolished after perusal of the medical report, wherein the doctor in his medical report has clearly opined that there is no sign of use of force, there are no sign of any force or penetration injury found regarding sexual violence; sexual violence cannot be ruled out and till date there is no any laboratory test to ascertain the fact that the rape has been committed by the appellant and further considering the fact that appellant is in jail since 24.07.2022 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, the impugned order passed by the trial court is liable to be set aside.

17. Accordingly, the appeal is **allowed**. Consequently, the order dated 13.09.2022 passed by the Court of learned Special Judge (SC/ST Act), Sitapur in Bail Application No. 422 of 2022, under Section 376 I.P.C. and Section 3(2) V of SC/ST Act, F.I.R. No. 0363/22, Police Station Ramkot District Sitapur is hereby **reversed** and **set aside**.

18. Let the appellant, **Mukhtar Ansari @ Mukhtar Ali** be enlarged on bail in F.I.R. No. 0363/22, Police Station Ramkot District Sitapur under Section 376 I.P.C. and Section 3(2) V of SC/ST Act 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 :- 01.11.2023

Arvind