

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2604 of 2022

Appellant :- Ram Milan Patel

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

Counsel for Appellant :- Arshad Ahsan Siddiqui

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

Learned counsel for the appellant prays for final arguments and submits that the matter pertains to bail.

Learned A.G.A. has already filed counter affidavit and in reply thereto rejoinder affidavit has been filed by the appellant. Both these affidavits are available on record.

This Court vide order dated 21.10.2022 issued notice to the opposite party No. 2 to file counter affidavit. Thereafter several date have passed, but no counter affidavit has been filed on her behalf nor any counsel is present to press her case. On 19.9.2023 this Court had passed the following order:

"Learned A.G.A. has filed counter affidavit, which is taken on record.

Learned counsel for the appellant prays for and is allowed 1 week's time to file rejoinder affidavit.

As per the office-report dated 09.01.2023, notice has already been served on the opposite party no.2, but till date no counter affidavit has been filed by her.

As a last opportunity, 3 days' time is granted to her to file counter affidavit, if any.

List this case on 19.10.2023."

Today also, no counter has been filed on behalf of the opposite party No. 2 nor any counsel has put in appearance on her behalf. It appears that the opposite party No. 2 is not interested to contest this case.

In view of the above, this court has no option, but to consider the appeal.

Heard Sri Arshad Ahsan Siddiqui, learned counsel for the appellant as well as the learned A.G.A. for the State and perused the entire record.

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 27.07.2022 passed by learned Special Judge, S.C./S.T. Act, Raebareli, in Bail Application No. 1189 of 2022, Ram Milan Patel v. State of U.P., F.I.R./Case Crime No. 192 of 2022, under Sections 376(2) (ठ), 342, I.P.C. and Section 3(2)(v) of the S.C./S.T. Act, Police Station Unchahar, District Raebareli, whereby the bail application of the appellant has been rejected.

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 rivalry. No such case, alleged by the prosecution, has ever taken place. The F.I.R. was lodged by the mother of the prosecutrix on 11.4.2022 regarding incident dated 10.4.2022 under Sections 354(क), 342, I.P.C., Section 7/8, POCSO Act, and 3(2)(घ) of the S.C./S.T. (P.A.) Act. In the F.I.R. the allegation of molestation was levelled against the appellant. Thereafter, statement of the prosecutrix was recorded under Section 161, Cr.P.C. in which she has repeated almost the same version of the F.I.R. Thereafter, her statement under Section 164, Cr.P.C. was recorded, in which she has almost taken a somersault on the pressure created by the Police and the family members and she has made an allegation of rape against the appellant. However, she on the first instance refused for internal medical examination of the victim. The first medical of the victim was done on 12.4.2022 at 11.36 a.m. at C.H.C. Unchahar, Raebareli, and as the mother had refused for internal examination, only external examination was done and in that examination the doctor has not given any opinion regarding sexual assault nor there exists any internal or external injury. Age of the victim was found to be about 18 years as per her radiological examination. Thereafter, second medical examination was conducted on 6.5.2022, in which also no any external and internal injuries was seen at the time of examination. There was no sign of use of force, however, final opinion was reserved pending to the availability of FSL reports.

Till date, it was confirmed by the learned counsel, that no FSL report is available on record. This fact has also been submitted by the learned A.G.A., thus, the counsel submitted that in

absence of any positive medical report which could ascertain the commission of rape, against the appellant, the entire prosecution story appears to be false and fabricated, lodged only with the intention to defame the image of the appellant and his entire family in the society.

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, which fact has been stated in para-29 of the affidavit filed in support of the bail-application and he is in jail since 06.05.2022 and he has already undergone substantial period of detention and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned A.G.A. for the State opposed the prayer for bail and argument advanced by the learned counsel for the appellant. He submits that as the offence is *prima facie* made out against the appellant, thus, the bail-application as well as the appeal be rejected, however, he is unable to dispute the contentions raised by learned counsel for the appellant.

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, this Court finds force in the submissions of the learned counsel for the appellant that in her statement recorded under Section 161, Cr.P.C. the prosecutrix has repeated almost the same version of the F.I.R., however, in her statement under Section 164, Cr.P.C. she has almost taken a somersault on the pressure created by the Police and the family members and she has made allegation of rape against the appellant, but she, at the first instance, refused for internal medical examination of the

victim. In the first medical of the victim done on 12.4.2022 at 11.36 a.m. at C.H.C. Unchahar, Raebareli, but as the mother/informant had refused for internal examination of the victim, only external examination was done and in that examination the doctor has not given any opinion regarding sexual assault nor there exists any internal or external injury. Age of the victim was found to be about 18 years as per her radiological examination. Thereafter, second medical examination was conducted on 6.5.2022, in which also no any external and internal injuries was seen at the time of examination. There was no sign of use of force, however, final opinion was reserved pending to the availability of FSL reports. Till date, it was submitted by the learned counsel, that no FSL report is available on record. This fact has also been confirmed by the learned A.G.A., thus, the counsel submitted that in absence of any positive medical report which could ascertain the commission of rape, against the appellant, the entire prosecution story appears to be false and fabricated, lodged only with the intention to defame the image of the appellant and his entire family in the society and considering the fact that there are contradictions in the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C; allegation of rape got demolished after perusal of medical report of the prosecutrix, wherein doctor has clearly stated that no definite opinion regarding sexual assault can be given; the age of the prosecutrix is 18 years, 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.

Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 27.07.2022 passed by learned Special Judge, S.C./S.T. Act, Raebareli, in Bail Application No. 1189 of 2022, Ram Milan Patel v. State of U.P., F.I.R./Case Crime No. 192 of 2022, under Sections 376(2)(3), 342, I.P.C. and Section 3(2)(v) of the S.C./S.T. Act, Police Station Unchahar, District Raebareli, is hereby set aside and reversed.

Let the appellant, **Ram Milan Patel** be released on bail in the Case Crime No. 192 of 2022, under Sections 376(2)(3), 342, I.P.C. and Section 3(2)(v) of the S.C./S.T. Act, Police Station Unchahar, 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.

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.

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 :- 18.12.2023/A.Nigam