

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2696 of 2022

Appellant :- Govind Malik

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

Counsel for Appellant :- Krishan Kumar, Lalji Prasad Shukla

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. As per office report dated 9.1.2023 notice has been served personally on opposite party No. 2, but despite several dates passed thereafter no counter affidavit has been filed by the opposite party No. 2 nor any counsel has filed vakalatnama on his behalf to press his case, hence it appears that the opposite party is not interested to contest this case.

2. Heard Sri Krishna Kumar, learned counsel for the appellant as well as learned A.G.A. for the State and perused the entire record.

3. 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 12.10.2022 passed by learned Special Judge, S.C./S.T. Act, Sitapur, in Bail Application No.517 of 2022, Case Crime No. 323 of 2022, under Sections 363, 366, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Maholi, District Sitapur, whereby the bail application of the appellant has been rejected.

4. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case due to enmity and village rivalry. He further submits that the appellant has been implicated in this case with intention to defame his image as well as the image of his family in the society. As per the case set up by the prosecution, on 17.06.2022 the accused/appellant had enticed away the daughter of the complainant.

5. Learned counsel for the appellant further submits that the F.I.R. has been lodged after nine days of the alleged incident. The prosecutrix has denied her medical examination. In her statement recorded under Section 161, Cr.P.C. the prosecutrix has stated her date of birth to be 16.9.2005. She further stated that she was in love with the appellant. When her parents came to know about this, they scolded me and were always doubtful on her, therefore, on the said date, i.e., 17.6.2022 she by opening her channel had gone to the appellant. The appellant taken her to Nainital, where they both lived for two days.

Thereafter, the appellant took her to West Bangal, where they were living and when the appellant had gone on work, the Police arrived there and arrested her. She specifically stated in her statement that the appellant had not committed any misdeed with her.

6. In her statement recorded under Section 164 Cr.P.C., the prosecutrix has repeated the same version, and said that She is 17 years old. She had gone with the appellant of her own. The appellant has not committed any misdeed with her.

7. 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 14.07.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

8. Learned counsel for the opposite party no.2 as well as learned A.G.A. for the State opposed the prayer for bail, however, they are unable to dispute the contentions raised by learned counsel for the appellant.

9. 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 the fact that the F.I.R. has been lodged after nine days of the alleged incident; in her statement recorded under Section 161, Cr.P.C. the prosecutrix has stated her date of birth to be 16.9.2005 and that she was in love with the appellant and had gone with him on her own sweetwill and the appellant has not committed any misdeed with her; in her statement recorded under Section 164 Cr.P.C., the prosecutrix has repeated the same version, and said that she is 17 years old. She had gone with the appellant of her own. The appellant has not committed any misdeed with her; the prosecutrix has denied her medical examination 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.

10. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 12.10.2022 passed by learned Special Judge, S.C./S.T. Act, Sitapur, in Bail Application No. 517 of 2022, Case Crime No. 323 of 2022, under Sections 363, 366, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Maholi, District Sitapur, is hereby set aside and reversed.

11. Let the appellant, **Govind Malik** be released on bail in the Case Crime No.323 of 2022, under Sections 363, 366, I.P.C. and Section 3(2)(v) of S.C./S.T. Act, Police Station Maholi, District Sitapur, 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.

12. 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.

13. 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 :- 6.12.2023

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