

Neutral Citation No. - 2023:AHC-LKO:84057

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2921 of 2022

Appellant :- Akil @ Akhil Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt.
Lko. And Another

Counsel for Appellant :- Shailendra Misra, Kapil Gupta, Kuldeep
Prakash, Rajendra Prasad

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. The case is taken up in the revised call.
2. Heard Shri Kapil Gupta, the learned counsel for the appellant as well as Shri Satendra Kumar Srivastava, the learned A.G.A. for the State-opposite party No. 2 and perused the entire record.
3. This Court vide order dated 23.11.2022 issued notice to the opposite party No. 2.
4. As per the office report dated 27.04.2023 notice has already been served upon the opposite party No. 2 but till date neither any counsel has appeared on behalf of opposite party No. 2 nor counter affidavit has been filed on her behalf. Thereafter, this Court vide order dated 17.10.2023 passed the following order:

“Learned counsel for the applicant has filed rejoinder affidavit to the counter-affidavit filed by the A.G.A., which is available on record.

As per office report dated 27.4.2023, notice has already been served upon opposite party No. 2, but neither any counter-affidavit has been filed on her behalf nor any counsel is present to press her case.

Accordingly, as a last opportunity, 10 days' and no more time is granted to the opposite party No. 2 to file counter affidavit. 3 days' thereafter shall be available to the learned counsel for the appellant for filing rejoinder affidavit, if any.

List this case on 08.11.2023.”

5. Today when the case is taken up, neither any counsel has appeared on behalf of opposite party No. 2 nor counter affidavit has been filed on her behalf. It appears that the opposite party No.2 is not interested to file any counter affidavit.

6. 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.

7. Learned A.G.A. has filed counter affidavit and in reply thereto learned counsel for the appellant has filed rejoinder affidavit.

8. 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 15.10.2022 passed by the court of Special Judge (SC/ST Act), Hardoi in Bail Application No. 2518/2022 (Akil Alias Akhil Singh Vs. State of U.P.) in Case Crime No. 390/2022, under Sections 376, 452, 506 I.P.C. and Section 3(2) (v) SC/ST Act, Police Station Tadiyawan, Hardoi whereby the bail application of the appellant has been rejected.

9. 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.

10. Learned counsel for the appellant further submits that the present F.I.R. has been lodged by the prosecutrix on the pressure created by the rival Pradhan to whom the appellant has not supported in the election and also with the intention to get some financial aid by the State Exchequer.

11. Learned counsel for the appellant submits that there is vast contradiction in the version of the F.I.R. and in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. wherein in F.I.R. she has stated that the appellant has taken forcefully to the prosecutrix in his shop from the front gate and in her statement recorded under Section 164 Cr.P.C. she has stated that she was taken in the lap by the appellant and were taken 78 steps and the prosecutrix was taken from the back gate of the shop. The time of the alleged incident was shown in the night around 11.00 p.m., thus as per the averments made in the statement recorded under Sections 161 and 164 as well as F.I.R., the story totally appears to be un-believable and improbable that at 11.00 p.m. in the night a young girl (the prosecutrix) was coming alone without accompanying any male or

female member of her family. The alleged incident was only shown to give gravity to the offence.

12. Learned counsel for the appellant further submits that the allegation of rape against the appellant, as levelled by the prosecutrix, got demolished after perusal of the medical report, wherein the doctor has opined that there is no internal or external injury seen on the person of the prosecutrix. No bleeding, no discharge was seen at the time of the examination. The doctor in his medical examination has clearly opined that on the basis of internal and external examination, no definite opinion can be given about sexual assault. Urine Pregnancy Test also came negative. Thus, the medical report does not support the allegation of rape and speaks totally against the version of the prosecutrix.

13. Learned counsel for the appellant further submits as per educational certificate, the date of birth of the prosecutrix is 25.10.1999, thus on the date of alleged incident, she was more than 21 years of age and she was major and she knew her consequences very well. He further submits that the parties are consenting parties, but only to fear of the society, when she caught with the appellant at the time of the alleged incident, she has narrated a false story on the pressure created by the police and the family members.

14. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 12.09.2022, 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.

15. 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 12.09.2022 and that in the

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

16. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 15.10.2022 passed by the court of Special Judge (SC/ST Act), Hardoi in Bail Application No. 2518/2022 (Akil Alias Akhil Singh Vs. State of U.P.) in Case Crime No. 390/2022, under Sections 376, 452, 506 I.P.C. and Section 3(2) (v) SC/ST Act, Police Station Tadiyawan, Hardoi deserves to be set aside and consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

17. Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that there is active participation of accused/appellant in the crime. Therefore, the accused/ appellant is not entitled to be enlarged on bail and the instant criminal appeal deserves to be dismissed. However, he has been unable to dispute the other factual submissions advanced by the learned counsel for the accused/appellant.

18. 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 there is vast contradiction in the version of the F.I.R. and in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C.; there also appears force in the argument of learned counsel for the appellant that the allegation of rape against the appellant, got demolished after perusal of the medical report, wherein the doctor has opined that there is no internal or external injury seen on the person of the prosecutrix and on the basis of internal and external examination, no definite opinion can be given about sexual assault. Urine Pregnancy Test also came negative. Thus, the medical report does not support the allegation of rape and speaks totally against the version of the prosecutrix and as per educational certificate, the prosecutrix was major and she knew her consequences very well and the parties are consenting parties, but only to fear of the society, when she caught with the appellant at the time of the alleged

incident, she has narrated a false story on the pressure created by the police and the family members further considering the fact that appellant is in jail since 12.09.2022 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.

19. Accordingly, the appeal is **allowed**. Consequently, the order dated 15.10.2022 passed by the court of Special Judge (SC/ST Act), Hardoi in Bail Application No. 2518/2022 (Akil Alias Akhil Singh Vs. State of U.P.) in Case Crime No. 390/2022, under Sections 376, 452, 506 I.P.C. and Section 3(2) (v) SC/ST Act, Police Station Tadiyawan, Hardoi is hereby **reversed** and **set aside**.

20. Let the appellant, **Akil alias Akhil Singh**, be enlarged on bail in Case Crime No. 390/2022, under Sections 376, 452, 506 I.P.C. and Section 3(2) (v) SC/ST Act, Police Station Tadiyawan, Hardoi 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.

21. 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.

22. 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 :- 19.12.2023

Arvind