

Neutral Citation No. - 2024:AHC-LKO:48492

Court No. - 16

Case :- CRIMINAL APPEAL No. - 46 of 2024

Appellant :- Mohd. Ansar Ali

Respondent :- State Of U.P. Thru. Prin. Secy./Addl. Chief Secy.

Deptt. Of Home Lko. And Another

Counsel for Appellant :- Rohit Tripathi, Nida Navi, Shishir

Srivastava, Syed Zulfiqar Husain Naqvi

Counsel for Respondent :- G.A., Akhil Anand

Hon'ble Shamim Ahmed, J.

1. Heard Sri Rohit Tripathi, learned counsel for the appellant as well as Sri Akhil Anand, learned counsel for the opposite party No.2 and Ms. Ankita Tripathi, learned AGA for the State and perused the record.
2. Learned A.G.A. has already filed the counter affidavit and in reply thereto learned counsel for the appellant has filed the rejoinder affidavit, which is available on record.
3. Learned counsel for the opposite party No.2 submits that he is not interested to file counter affidavit and he will argue the case without counter affidavit.
4. This is an appeal filed under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the order dated 11.12.2023 passed by the Court of Additional Sessions Judge/Special Judge SC/ST Act, Hardoi, whereby rejecting the Bail Application No. 3587/2023 (Mohd. Ansar Vs. State of U.P.) filed by the accused/appellant for his release in Case Crime No. 163 of 2023, under Sections 376D, 452, 328 IPC, Section 67 of the Information Technology Act and Section 3(2)(V) of SC/ST Act, Police Station Tandiyawan, District Hardoi.
5. Learned counsel for the appellant submits that an FIR was filed under Section 376D, 452, 328 I.P.C. and Section 67 of the Information Technology Act alleging that the 3 persons named in the FIR had made the photo viral, the applicant was not named for the offence of making the photo viral although the allegations were leveled that the applicant was also involved with the said co-accused. Subsequently in

the statement under Section 164 CrPC, the victim changed the story and stated that the three persons including the applicant had committed the offence of making photo viral. It was also stated that some injection was administered on the victim because of which she became unconscious. The medical report on record did not indicate any major injury whatsoever. It is further argued that out of the three accused named in the statement made under Section 164 CrPC, the chargesheet has been filed only against the two persons only.

6. Learned counsel for the appellant further submits that similarly circumstanced and identically placed co-accused Arif @ Asif was already granted bail by a co-ordinate Bench of Court in Criminal Appeal No. 168 of 2024: Arif @ Asif Vs. State of U.P. vide order dated 18.06.2024. He further submits that the case of the appellant is not on the worst footing than that of the other co-accused, who has been already granted bail by co-ordinate Bench of this Court.

7. Learned counsel for the appellant further submits that accused/appellant is languishing in jail since 18.11.2023, 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.

8. 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 18.11.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

9. For the aforesaid reasons, learned counsel for the appellant submits that the instant criminal appeal deserves to be allowed and the order dated 11.12.2023 passed by the Court of Additional Sessions Judge/Special Judge SC/ST Act, Hardoi deserves to be set aside and

consequently, the accused/appellant deserves to be enlarged on bail during pendency of the trial.

10. 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.

11. 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 is huge variance in the stand made under Section 164 CrPC not even reflected in the FIR, coupled with the fact that the medical report does not support the allegations leveled, the applicant, who is in custody since 18.11.2023 and has now by done a substantial period of detention further considering that the similarly circumstanced and identically placed co-accused Arift @ Asif was already granted bail by a co-ordinate Bench of Court in Criminal Appeal No. 168 of 2024: Arif @ Asif Vs. State of U.P. vide order dated 18.06.2024 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.

12. Accordingly, the appeal is **allowed**. Consequently, the order dated 11.12.2023 passed by the Court of Additional Sessions Judge/Special Judge SC/ST Act, Hardoi, whereby rejecting the Bail Application No. 3587/2023 (Mohd. Ansar Vs. State of U.P.) filed by the accused/appellant for his release in Case Crime No. 163 of 2023, under Sections 376D, 452, 328 IPC, Section 67 of the Information Technology Act and Section 3(2)(V) of SC/ST Act, Police Station Tandiyawan, District Hardoi are hereby **reversed** and **set aside**.

13. Let the appellant, **Mohd. Ansar Ali**, be enlarged on bail in Case Crime No. 163 of 2023, under Sections 376D, 452, 328 IPC, Section 67 of the Information Technology Act and Section 3(2)(V) of SC/ST Act, Police Station Tandiyawan, District 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.

14. 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.

15. 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 :- 18.7.2024

Arvind

(Shamim Ahmed, J.)