

Court No. - 16

Case :- CRIMINAL APPEAL No. - 649 of 2024

Appellant :- Vasu Verma

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

Counsel for Appellant :- Satyam Singh

Counsel for Respondent :- G.A., Rajesh Kumar

Hon'ble Shamim Ahmed,J.

Heard Sri Satyam Singh, learned counsel for the applicant/appellant as well as Sri Rajesh Kumar, learned counsel for the prosecutrix/opp. party no. 2, 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 08.02.2024 passed by learned Special Judge, S.C./S.T. Act, Barabanki in Bail Application No. 479 of 2024, Case Crime No. 773 of 2023, under Sections 376, 506 I.P.C. and Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 19879 (hereinafter referred as 'the S.C./S.T. Act), Police Station Fatehpur, District Barabanki, whereby the bail application of the appellant has been rejected.

Learned counsel for the appellant submits that the appellant is innocent young boy of 22 years and he has been falsely implicated in the present case by the prosecutrix through indecent means. As per the case set up by the prosecutrix in the first information report, she came in contact with the appellant via Instagram and phone. The appellant used to visit the house of the prosecutrix. On 10.09.2023 the appellant called the prosecutrix to Tehsil Fatehpur on the pretext of marrying her in Vaishno Devi Mandir and placed her in a rented house for two days. Thereafter, he took the prosecutrix to Vaishno Devi, where they stayed for about 10 days in a rented room and thereafter the appellant took the prosecutrix to his Aunt's (Mausi's) house at Delhi and stayed there for 4-5 days. After that, the appellant fled away from there telling some urgent work, leaving alone the prosecutrix.

Learned counsel for the appellant submits that in the F.I.R. itself the prosecutrix herself has admitted her age to be 29 years. He further submits that whatever the story has been developed in the first information report, is totally false and fabricated and it has been made only to create pressure on the appellant, a young boy of 22 years only, so that he may solemnize marriage with the prosecutrix, who is 7 years' older than that of the present

appellant. The learned counsel further submits that if for the sake of arguments the case of the prosecutrix as developed in the first information report, is assumed to be true that the appellant has given false promise of marriage to her and made physical relations several times, then also the prosecutrix is a major lady, aged about 29 years, 7 years' older to the appellant, and she knew the consequences very well before making physical relation with the appellant and when the relation was made several times and the prosecutrix did not make any objection, then it is a relation with 'consent' and it does not amount to rape. In support of his arguments, learned counsel for the appellant has placed reliance on the Supreme Court judgment in the case of **Pramod Suryabhan Pawar v. State of Maharashtra [(2019) 9 SCC 608] [Para 18 and 21]**. He submits that the ratio of law as laid down by Hon'ble the Supreme Court in the case of Pramod Suryabhan Pawar (supra) is also applicable in the case of the present appellant.

The statements of the prosecutrix recorded under Section 161 and 164, Cr.P.C. were made on the pressure created by her family members and the Police. She herself has admitted this fact that she accompanied the appellant several times to several places and stayed for long period in a room and also relation was made with him, but there is no allegation regarding forceful relation made by the appellant. Whatever relation was made, that was made with the consent of the prosecutrix and as it has been stated that the appellant backed up from the marriage, counsel submits that there were hundred per cent chances of this possibility and this fact was very well known to the prosecutrix that the appellant at any time might flew up from his promise of marriage. In spite of knowing the consequences the prosecutrix, who is aged about 29 years and 7 years' older than the appellant, made relation several times with the appellant, thus, the counsel submits that this physical relation made by the appellant with the prosecutrix does not amount to rape and a consensual relation.

Learned counsel for the appellant further submits that the prosecutrix has denied for her internal and external medical examination. This fact also blinks the case of the prosecutrix, thus, in absence of any medical examination it cannot be said that any physical relation has been made forcefully by the appellant and whatever the story has been developed by the prosecutrix in the first information report as well as in her statements recorded under Sections 161 and 164, Cr.P.C. is only stated with the intention to defame the image of the appellant and his family members 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. No case of forceful sexual relation has been made against the appellant and the entire story as developed by the prosecution is false and the F.I.R was lodged after much delay, for which no plausible explanation has been given. 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 15.12.2023 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Sri Rajesh Kumar, learned counsel for the prosecutrix and Sri Ashok Kumar Srivastava, learned A.G.A. opposed the argument as advanced by the learned counsel for the appellant and submits that the bail application of the appellant be rejected, however, they are 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 and considering the fact that the appellant is a young boy, 7 years younger than that of the prosecutrix, and there is no allegation against him regarding making of forceful physical relation with the prosecutrix; the allegation of any wrong doing with the prosecutrix also blinks with the fact that the prosecutrix has denied her medical examination; the age of the prosecutrix is 29 years, as such, she is major and know the consequences very well 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**, as also in the case of **Pramod Suryabhan Pawar (supra)** this Court is of the view that the learned trial court has failed to appreciate the material available on record. The order passed by the trial court is liable to be set aside.

Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 08.02.2024 passed by learned Special Judge, S.C./S.T. Act, Barabanki in Bail

Application No. 479 of 2024, Case Crime No. 773 of 2023, under Sections 376, 506 I.P.C. and Section 3(2)(v), S.C./S.T. Act, Police Station Fatehpur, District Barabanki, is hereby **set aside and reversed**.

Let the appellant, Vasu Verma S/o Ajay Verma be released on bail in Case Crime No. 773 of 2023, under Sections 376, 506 I.P.C. and Section 3(2)(v), S.C./S.T. Act, Police Station Fatehpur, District Barabanki, 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 :- 3.7.2024

A.Nigam