

Court No. - 16

Case :- CRIMINAL APPEAL No. - 901 of 2024

Appellant :- Mo. Alam Ansari

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

Counsel for Appellant :- Rajneesh Chandra Misra

Counsel for Respondent :- G.A., Vivek Kumar Singh

Hon'ble Shamim Ahmed,J.

1. Heard Shri Rajneesh Chandra Misra, learned Counsel for the appellant, Shri Vivek Kumar Singh, learned Counsel for the respondent No.2, Shri Anshuman Verma, learned A.G.A. for the State-respondent No.1 and perused the material placed on record.
2. In compliance of the order dated 18.03.2024, the matter is being taken up through video conferencing. The appellant, namely-Mo.Alam Ansari was present through video conferencing from District Jail, Lucknow.
3. The present appeal under Section 14(A)(II) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 has been filed on behalf of the appellant, namely-Mo. Alam Ansari against order dated 20.02.2024 passed by learned Special Judge SC/ST Act, Lucknow in Case Crime No.16/2024 under Section 376, 504 and 506 I.P.C. and Section 3(1)(Da), 3(1)(Dha) and 3(2)5 SC/ST Act, Police Station-Wareerganj, District-Lucknow, by which the trial has rejected the bail application of the appellant.
4. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case due to enmity and rivalry. As per the case set up by the prosecution, a false promise of marriage was made by the appellant to the prosecutrix, who is aged about 26 years and she is major. He further submits that both the appellant and the prosecutrix used to work in a private Hospital and came close to each other, thereafter, the appellant and prosecutrix used to meet each other with their own sweet will. He further submits that as per her statement recorded under Section 164 Cr.P.C. the prosecutrix herself admitted this fact that she was in relation with the appellant for last one year and was in love affair with him, she went with the appellant to several hotels and

used to stay in room, which was allotted to the prosecutrix by the Hospital in which they were working and stayed there with him several times and they were continuously making physical relations with each other and the physical relation was made with the consent of the prosecutrix. She had not made any allegation against the appellant regarding forceful physical relations nor any allegation of rape has been leveled against the appellant. The prosecutrix has further stated in her statement recorded under Section 164 Cr.P.C. that on the pressure created for marriage, the appellant refused for marriage and warned her that if she tells about this incident to anybody, he will upload her private pictures and videos, shot by him. The statement of the prosecutrix recorded under Section 164 Cr.P.C. is quoted hereunder:-

"बयान अंतर्गत धारा-164 दंडप्रोसं० नाम- दीप्ती सिंह उम्र 26 साल पिता-नाहर सिंह, निवासी-शहर अस्पताल नबी उल्लाह रोड थाना-वजीरगंज, जिला लखनऊ ने सशपथ बयान दिया कि मैं सहर अस्पताल में ओटी टेक्नीशियन रूप में कार्य करती हूँ। मैं वहां अगस्त 2022 से नौकरी कर रही हूँ। अस्पताल में मो० आलम अंसारी फार्मासिस्ट की तरह काम करता था। काम की वजह से हमारी दोस्ती हो गयी। हमारे बीच धीरे-धीरे प्यार हो गया। 26 फरवरी 2023 को आलम मुझे घुमाने क्लाक टावर लेकर गया। वहां से देर हो गया तो आलम मुझे होटल लेकर गया। मैंने मना किया, तो आलम गुस्सा होने लगा। हमारे बीच उस रात शारीरिक सम्बन्ध बने। हमारे बीच शारीरिक सम्बन्ध मेरी मर्जी से बने, इसलिये बने, क्योंकि आलम ने मुझसे शादी का वादा किया था। इसके बाद हमारे बीच शारीरिक सम्बन्ध अक्सर बनते थे। कभी होटल में कभी मेरे कमरे पर। मैं शारीरिक संबंध शादी की उम्मीद से बनाती थी और आलम भी मुझसे ही शादी करने को कहता भी था। मैं उससे तीन बार प्रेगनेन्ट भी हुई। दो बार तो मैंने आलम के कहने पर गर्भ गिरा चुकी हूँ। तीसरी बार उसने मुझे धोखे से सब्जी में कुछ मिलाकर खिलाया, जिससे मेरा गर्भ गिर गया। मैं ऐसा इसलिये भी कह सकती हूँ, क्योंकि वो सब्जी मेरी दोस्त ने खाया तो उसको भी असमय पीरियड्स आ गये। आलम ने 20 मार्च, 2024 को शादी करने की बात सबको बता रखी थी। मेरे अस्पताल में भी सबको पता था आलम ने अस्पताल की एक और लड़की रिद्धिमा से भी शारीरिक सम्बन्ध बनाये थे, जिसका जब मुझे पता चला, तो आलम कहने लगा कि उससे गलती हो गई और वो मुझसे ही प्यार करता है।

यह घटना अक्टूबर, 2023 की है। दिसम्बर 2023 में मुझे यह पता चला कि इसकी शादी तय हो गयी है कहीं और। आलम मुझसे कहता था कि वो यह रिश्ता तोड़ देगा, वो रिश्ता घरवालों ने किया है। यह कहता था कि शादी मुझसे ही करेगा। मैंने अपनी और आलम की फोटो सना के भाई को भेज दिया था, जिससे कि आलम और सना की शादी अगर न टूटी हो तो टूट जाये। इस बात पर आलम मुझसे गुस्सा हो गया और कहने लगा कि जो करना है मैं कर लूँ अब वो मुझसे शादी नहीं करेगा। इसके बाद से आलम का फोन बन्द आ रहा था। मुझे ऐसा लगा कि आलम ने शादी के नाम पर मेरा शारीरिक इस्तेमाल किया है, तो मैंने थाने में रिपोर्ट लिखा दी। मुझे आलम से उसके वादेनुसार शादी करनी है, अगर आलम मुझसे शादी का वादा न करता तो मैं उसके साथ शारीरिक सम्बन्ध कभी नहीं बनाती। 11-12 जनवरी, 2024 को जब मैं आलम से मिली थी और वो गुस्से में था, तो उसने मुझे स्कूटी से धक्का देकर गिरा दिया। अब आलम की अम्मी,

घरवाले यह कह रहे हैं कि मुझसे ही शादी करायेगें आलम की। आलम भी मुझसे शादी करना चाहता है। उसने यह बताया कि उसने गुस्से में मना कर दिया था समाज और अस्पताल में भी आलम के घरवाले मुझसे ही आलम की शादी करने का कहते हैं मुझे और कुछ नहीं कहना है। मैं यह बयान अपनी मर्जी से दे रही हूँ। "

5. Thus, learned counsel for the appellant submits that on perusal of statement of the prosecutrix recorded under Section 164 Cr.P.C. it appears that the prosecutrix made physical relations with the appellant with her own sweet will and was hoping that the appellant would marry her in future, though, she knew that the appellant belongs to a different community and he may turn back from promise of marrying her in future, thus, she knew all the consequences very well as she is aged about 26 years.

6. Learned counsel for the appellant further submits that there are major contradictions in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. as well as in the version of the F.I.R., where the prosecutrix has clearly stated that she was not forced to make any physical relations with the appellant and both the parties were consenting parties and they made physical relations with each other several times with their own sweet will, thus, the trial court did not appreciate the material placed before it and has rejected the bail application of the appellant in a cursory manner.

7. Learned counsel for the appellant further submits that so far as false promise of marriage is concerned, no such promise was ever made and even though if any promise is made with the prosecutrix, she was major and was well aware of the consequences and on her will the physical relation was made. Thus, it does not amount to rape and no case is made out against the appellant. In support of his arguments, learned counsel for the appellant has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra, (2019) 9 SCC 608** and placed reliance upon paras 17 and 21, which are reproduced hereunder:-

"17. In Uday v State of Karnataka the complainant was a college going student when the accused promised to marry her. In the complainants statement, she admitted that she was aware that there would be significant opposition from both the complainants and accuseds families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The court observed that in these circumstances the accuseds

promise to marry the complainant was not of immediate relevance to the complainants decision to engage in sexual intercourse with the accused, which was motivated by other factors: [(2003) 4 SCC 46].

25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married (Emphasis supplied).

21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellants failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellants promise of marriage. Therefore, even if the facts set out in the complainants statements are accepted in totality, no offence under Section 375 of the IPC has occurred."

8. Thus, learned counsel for the appellant submits that in view of the judgment rendered by the Hon'ble Supreme Court, the promise of marriage made by the appellant to the prosecutrix is in good faith as per the case set up by the prosecutrix and it does not amount to rape as there is a consent of the prosecutrix. It is further submitted that the prosecutrix herself denied her medico legal examination before the Doctor, which clearly shows that the prosecution initiated against the appellant is nothing but a ploy to defame him and his family members in the society, as such, allegation of rape leveled against the appellant is false and, therefore, the appellant is entitled for bail.

9. 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 14.01.2024 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

10. Learned A.G.A. as well as learned Counsel for respondent No.2 opposed the prayer for bail, however, they are unable to dispute the contentions raised by learned counsel for the appellant and submit that the trial court has rightly rejected the bail application of the appellant after considering the entire material placed on record, thus, no interference by this Court is required in the matter.

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, 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 in the statement of the victim recorded under Sections 164 Cr.P.C., there is no allegation of rape and also the prosecutrix denied her medico legal examination, which shows that the entire prosecution story has been narrated with the intention to falsely implicate the appellant, so that in fear of criminal prosecution the appellant and his family members may compromise the situation. There appears force in the argument of learned Counsel for the appellant that the prosecutrix in her statement recorded under Section 164 Cr.P.C. has clearly stated that the prosecutrix made physical relations several times with the appellant with her own sweet will and the appellant did not force her for any such thing, she is major aged about 26 years and she knew the consequences very well and also taking note of the fact that both the appellants and prosecutrix were consenting parties 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** and **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.

12. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 20.02.2024 passed by learned Special Judge SC/ST Act, Lucknow in Case Crime No.16/2024 under Section 376, 504 and 506 I.P.C. and Section 3(1)(Da), 3(1)(Dha) and 3(2)5 SC/ST Act, Police Station-Wareerganj, District-Lucknow is hereby **set aside** and **reversed**.

13. Let the appellant, **Mo. Alam Ansari** be released on bail in Case Crime No.16/2024 under Section 376, 504 and 506 I.P.C. and Section 3(1)(Da), 3(1)(Dha) and 3(2)5 SC/ST Act, Police Station-Wareerganj, District-Lucknow 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 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 :- 20.3.2024

Piyush/-