

Court No. - 29

Case :- CRIMINAL APPEAL No. - 779 of 2023

Appellant :- Deep Chandra Yadav

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

Counsel for Appellant :- Farooq Ayoob

Counsel for Respondent :- G.A.

Hon'ble Ajay Bhanot,J.

This criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant with the prayer to set aside the bail rejection order dated 17.01.2023 passed by the learned Special Judge SC/ST Act, Barabanki in Case Crime No. 573 of 2022 under Section 376 D IPC and Section 3(2)(V) SC/ST Act, P.S. Ramsanehi Ghat, District Barabanki. The applicant-appellant is in jail since 22.10.2022.

The bail application of the applicant was rejected by the learned trial court on 17.01.2023.

The following arguments made by Sri Upendra Pathak and Ms. Mansi Gupta, learned counsels holding brief of Sri Farooq Ayoob, learned counsel on behalf of the applicant-appellant, which could not be satisfactorily refuted by Shri Pramod Shukla, learned AGA from the record, entitle the applicant for grant of bail:

1. The incident occurred on 21.10.2022.
2. The FIR was got registered on 22.10.2022.
3. The delay in lodgment of the FIR in the facts and circumstances of the case is fatal to the prosecution case

and could not be defended or rationalised in the trial.

4. The victim has not nominated the applicant as the principal offender who committed rape with her.

5. The applicant was nominated by the first informant on the basis of hear say evidence.

6. Material contradictions in the F.I.R., statements of the victim under Section 161 Cr.P.C. and under Section 164 Cr.P.C. discredit the prosecution case.

7. Medical evidence to corroborate the commission of rape has not been produced by the prosecution.

8. The applicant has explained his criminal history. Learned AGA contends that the applicant has a criminal history of one more case under the Arms Act. Rejoining this issue, learned counsel for the applicant contends that the applicant is in jail. He does not have an effective pairkar. Hence, details of the case could not be obtained and stated in the bail application. However, relying on the records available with the learned AGA and the instructions received from his client, learned counsel for the applicant submits that the applicant was falsely nominated in the said case. The said case does not depict commission of heinous crime and has no bearing on the instant bail application.

In the light of the preceding discussion and facts and circumstances of the case and in view of the nature of the offence and evidence the appellant has made out a case for bail. The trial court erred in rejecting the bail

application. The impugned order dated 17.01.2023 suffers from infirmity and illegality and the same is liable to be set aside and the appeal is to be allowed.

Accordingly, the appeal is allowed and the impugned order rejecting the bail application of the appellant is set aside.

Let the applicant-appellant- Deep Chandra Yadav be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant-appellant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant-appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 15.3.2024

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