

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2102 of 2024

Appellant :- Asalam Khan

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

Counsel for Appellant :- Yogendra Nath Yadav, Rupendra Kumar
Yadav, Saurabh Yadav

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Sri Yogendra Nath Yadav, learned counsel for the appellant, Sri Mohd. Asif Khan, learned A.G.A.-I 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 06.04.2024 passed by learned Special Judge, S.C./S.T. Act, Lucknow in Bail Application No.2516 of 2024, C.N.R. No. UPLKO10049682024 arising out of Case Crime No.204 of 2022, under Sections 377, 323, 504, 506 I.P.C. and Section 3(1)(s), 3(2)(v) of S.C./S.T. Act, Police Station Mohanlalganj, District Lucknow, whereby the bail application of the appellant has been rejected.

Learned A.G.A.-I for the State has filed counter affidavit today in the Court, which is taken on record.

In spite of service of notice upon opposite party no.2 vide office report dated 08.08.2024, no counter affidavit has been filed nor any counsel has appeared on behalf of the opposite party no.2, as such, it appears that opposite party no.2 is not interested to contest this case.

Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case due to enmity and village rivalry. No such incident took place as alleged by the prosecution. The appellant has been implicated in a false case with intention to defame his image in the society.

He further submits that appellant was falsely implicated in the present case merely on the basis of one video but neither the said video nor the device was taken by the Investigating Officer in the custody and charge-sheet was filed merely on the basis of statements and trial was proceeded. During the course of trial informant as well as victim were examined before the trial court and they categorically denied the allegation of unnatural sex against the appellant. He further submits that as the informant of the present case i.e. P.W.1 has stated that in the video she had seen the victim as well as the appellant but the victim has denied the involvement of the appellant.

He further submits that merely on the statement of P.W.-1 i.e. sister of the victim, the name of present appellant was taken with some allegation but actually nothing was recorded by the Investigating Officer nor any such video or any mobile phone was recovered to justify the statement of P.W.-1, the complainant. Thus, it appears to be a case of false allegation merely on the ground to defame the image of the appellant and other persons who were shown to be involved in the present case. Even though the victim in his statement recorded before the trial court on 18.11.2023 has not stated anything regarding the incident which happened with him and has only stated that some marpeet was conducted by the persons, namely, Pankaj, Deepu and the present appellant. Thus, the allegations as per the first information report is totally false as it prima facie appears.

He further submits that as the victim and the informant have not supported the prosecution case and even nothing has been recovered by the Investigating Officer i.e. video or any device to support the prosecution case, there is least possibility of the conviction of the appellant.

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 10.05.2022 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

He further submits that the co-accused, namely Pankaj Kahar and Deepu Yadav have already been enlarged on bail by co-ordinate Bench of this Court vide order dated 02.02.2024 passed in Criminal Appeal No.2455 of 2023 and 1707 of 2022 respectively and the case of the present appellant is not on worst footing than that of the co-accused who have already been enlarged on bail, thus, the present appellant may also be enlarged on bail by this Court sympathetically.

Learned A.G.A.-I opposes the prayer for bail and submits that on perusal of the first information report, prima facie offence is made out, thus, the instant appeal be rejected and the appellant is not entitled to be released on bail.

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 deposition of P.W.-1 i.e. sister of the victim and P.W.-2 i.e. the victim before the learned trial court on 18.11.2023 and 20.06.2023, they have not at all supported the prosecution case and merely on the basis of false allegation, the name of present appellant alongwith other co-accused, i.e. Pankaj Kahar and

Deepu Yadav was taken with intention to defame their image in the society and also considering the fact that neither any video nor any device has been recovered by the Investigating Officer and also considering the fact that co-accused persons have already been released on bail by co-ordinate Bench of this Court and the case of the present appellant is not on the worse footing than that of the co-accused 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 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 06.04.2024 passed by learned Special Judge, S.C./S.T. Act, Lucknow in Bail Application No.2516 of 2024, C.N.R. No. UPLKO10049682024 arising out of Case Crime No.204 of 2022, under Sections 377, 323, 504, 506 I.P.C. and Section 3(1)(s), 3(2)(v) of S.C./S.T. Act, Police Station Mohanlalganj, District Lucknow is hereby **set aside** and **reversed**.

Let the appellant, **Asalam Khan** be released on bail in the Case Crime No.204 of 2022, under Sections 377, 323, 504, 506 I.P.C. and Section 3(1)(s), 3(2)(v) of S.C./S.T. Act, Police Station Mohanlalganj, 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.

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.

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 :- 9.8.2024
Saurabh