

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2242 of 2024

Appellant :- Gheesa Ram Yadav @ Dasiram

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

Counsel for Appellant :- Vinay Kumar Dubey, Saurabh Yadav, Vishal Kumar Yadav

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

Counter Affidavit filed by learned A.G.A. is taken on record.

Heard learned counsel for the appellant and learned A.G.A. appearing for the State.

This criminal appeal has been filed by the appellant under Section 14A (2) the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to set aside the order dated 7.6.2024 passed in Bail application No. 1557/2024, case crime No. 300/2024, under Sections 376D/328/506 I.P.C. and Section 3(2)(v) SC/ST Act, Police Station Bachharawan, District Raebareli.

It is alleged in the prosecution case that the daughter of the complainant aged about 21 years belongs to Scheduled Caste, who was residing at the house of her grandfather Shri Ram Prasad. On 09/05/2024 at about 3:00 PM in the day, the appellant, who is uncle in relation of the prosecutrix, took away her some distance in auto rickshaw under the pretext of walk and give her food and on the way. One Chandra (co-accused) also met who also sat in the auto (e-rickshaw) and took the prosecutrix outside the village and gave her cold drink mixed with intoxicants and took her to a deserted place where co-accused Dasiram Yadav and Sujit Kumar Yadav were already present. The daughter of the complainant was accompanied by (1) Chheda, (2) Chandra, (3) Dasiram Yadav, (4) Sujit Kumar Yadav and they committed rape with her daughter and when the prosecutrix cried and screamed, the accused persons threatened to kill her and said that if she screamed or told anyone, they would kill her. When complainant

brought her daughter at home and inquired from her, then her daughter told her about the incident and also told the names of the accused.

Learned counsel for the appellant-applicant submits that statement of the victim under Section 161 Cr.P.C. and Section 164 Cr.P.C. are at variance. Even before the Doctor she has given altogether different statement. She has made improvement in all the three statements. There is no corroborative evidence in support of the prosecution case. In the medical nothing corroborative has been found. The applicant-appellant has no criminal antecedents. The applicant is languishing in jail since 12.5.2024. Charge-sheet in the matter has been filed.

Learned counsel for the appellant further submits that co-accused Chheda Lal @ Chheda and Chandra Raj @ Chandra have been granted bail by this Court vide orders dated 10.12.2024 and 5.12.2024 passed in Criminal Appeal No.2970 of 2024 and Criminal Appeal No.3504 of 2024.

He further submits that there is no likelihood that the appellant-applicant after release on bail may flee from the process of law or will misuse the liberty of bail granted by this Court.

Learned A.G.A. has opposed the prayer for bail, but could not confront the factual submissions made by the learned counsel for the appellant-applicant.

On due consideration to the statements of the victim recorded under Section 161 and 164 Cr.P.C. as well as delay in lodging the FIR, the medical examination report, period of incarceration gone into by the appellant, the appellant has no criminal history, I am of the view that the learned court below has failed to appreciate the material available on record. In view of above, the order passed by the court below is liable to be set aside.

Accordingly, the appeal is allowed and the order dated 7.6.2024 passed in Bail application No. 1557/2024, case crime No. 300/2024, under Sections 376D/328/506 I.P.C. and Section 3(2)(v) SC/ST Act, Police Station Bachharawan, District Raebareli is set aside.

Let the appellant-applicant **Gheesa Ram Yadav @ Dasiram** involved in aforesaid case be released on bail on furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) 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.

(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, without sufficient cause, 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 and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant-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.

Order Date :- 19.12.2024

Madhu D.R/P.S