

Court No. - 12

Case :- CRIMINAL APPEAL No. - 2301 of 2024

Appellant :- Ashwani Verma

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

Counsel for Appellant :- Viksit Srivastava, Santosh Kumar Verma, Yojana Srivastava

Counsel for Respondent :- G.A., Shyam Karan Pandey

Hon'ble Saurabh Lavania, J.

1. Case is called out in the revised list. No-one appeared on behalf of opposite party no.2-complainant/victim.
2. Earlier order dated 23.10.2024 indicates that case would not be adjourned on any ground and would be taken up and heard in the first call even in the absence of learned counsel for opposite party no.2.
3. Taking note of the aforesaid, this Court proceeded to hear the appeal on merits which relates to seeking bail in Case Crime No.197 of 2024.
4. Heard counsel for the appellant, Shri Amitabh Chaturvedi, learned A.G.A. for the State and perused the record.
5. The present appeal has been filed under Section 14-A (2) of Scheduled Castes and Scheduled Tribes Act, 1989 (in short 'SC/ST Act') against the impugned order dated 10.07.2024 passed by Special Judge, SC/ST Act, Lucknow in Bail Application No.4624 of 2024, arising out of F.I.R/ Case Crime No.197 of 2024, under Sections - 328, 376, 504 I.P.C., and Section 3(2)(v) of SC/ST Act, Police Station- Sarojni Nagar, District Lucknow.
6. While pressing the present appeal, learned counsel for the appellant states that opposite party no.2/victim, aged about 27 years, lodged the FIR on 18.05.2024, the basis of criminal proceedings against the appellant, which was registered as FIR/Case Crime No.197 of 2024, under Sections 376, 328, 504 I.P.C. & Section 3(2)(v) of SC/ST Act.

7. It is further stated that from a perusal of the FIR as also the statement of the victim/opposite party no.2, it is apparent that appellant has not committed any offence and the FIR has been lodged just to create pressure upon the appellant to solemnize the marriage which could not solemnize on account of unavoidable reasons.

8. It is further stated that if the case of the prosecution is taken on its face value then in that event the case of the appellant is squarely covered by the judgment(s) of Hon'ble Apex Court rendered in the case of **Deepak Gulati vs. State of Haryana (2013) 7 SCC 675; Sonu @ Subhash Kumar vs. State of U.P. and Another (2021) 7 SCC; and Mandar Deepak Pawar vs. State of Maharashtra and Another 2022 SCC OnLine SC 2110.**

9. In continuation, learned counsel for the appellant stated that the appellant and victim came into contact through website known as 'Shadi.com' on 20.04.2023 and thereafter the victim on 26.05.2023 met with the appellant at Delhi and again on 04.04.2024 the victim met the appellant at Delhi and there the physical relations were established by the appellant with the victim/opposite party no.2 and obscene photographs of the victim were also taken by the appellant, as per the case set up in the FIR. However, during investigation the Investigating Officer could not recover the alleged photographs, as such charge sheet has not been filed in the offence indicated in the Information Technology Act, 2005.

10. It is submitted that the appellant, who is in jail since 28.05.2024 and has no criminal history, has been falsely implicated in the instant case and the entire story against the appellant, indicated by the victim that the appellant established physical relations with the victim on the pretext of marriage is false and concocted.

11. He further submitted that the chances of conviction of the appellant in the instant case are extremely bleak in view of the law related to establishing relationship on the pretext of false promise of marriage.

12. It is also stated that as per the observations made by Hon'ble

Apex Court in the above referred judgments to attract the offence under Section 376 IPC, the allegation should be to the effect that from the inception, the consent by the victim is a result of a false promise to marry and from the F.I.R., it reflects that the said contents in its true spirit are missing.

13. He lastly submitted that all the aforesaid aspects of the case were not considered by the trial court, as such, the present appeal is liable to be allowed and the impugned order may be set aside and the appellant be enlarged on bail.

14. Learned A.G.A. for the State vehemently opposed the prayer for bail, however, he could not dispute the aforesaid contention of counsel for the appellant.

15. Considered the submissions advanced by the counsel for the appellant, learned A.G.A. for the State and all the relevant documents placed on record.

16. Upon due consideration of the facts and circumstances of the case, submissions of counsel for the appellant and learned A.G.A., F.I.R., impugned order, as also the observations made by Hon'ble Apex Court in the judgments, referred above, including that the appellant is in jail since 28.05.2024 and has no criminal history as also the submissions regarding physical relations as also the chances of conviction of the appellant in the instant case, this Court finds that the present appeal is liable to be allowed. Accordingly, it is **allowed**.

17. Order dated 10.07.2024 passed by Special Judge, SC/ST Act, Lucknow in Bail Application No.4624 of 2024, arising out of F.I.R/ Case Crime No.197 of 2024, under Sections - 328, 376, 504 I.P.C., and Section 3(2)(v) of SC/ST Act, Police Station- Sarojni Nagar, District Lucknow, is hereby set aside.

18. Let appellant- **Ashwani Verma** be released on bail in the aforesaid case crime number on his furnishing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following additional conditions :-

- (i) The appellant shall cooperate with the prosecution during trial.
- (ii) The appellant shall not tamper with the evidence during trial.
- (iii) The appellant shall not pressurize/intimidate the prosecution witness(s).
- (iv) The appellant shall not commit an offence.
- (v) 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.
- (vi) The appellant shall remain present before the trial court on each date fixed, either personally or through counsel.
- (vii) The appellant shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court.
- (viii) The appellant shall remain present, in person, before the trial court on the dates fixed for recording of statement under Section 313 Cr.P.C.

19. In case of default of above conditions, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law

20. As this order relates to enlargement of the appellant on bail, it is clarified that observation(s) made in this order shall have no bearing on the merits of the case and the trial court shall not be influenced by any observation(s) made in this order.

Order Date :- 6.11.2024

Anand/-