

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2666 of 2024

Appellant :- Shoaib

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 4 Others

Counsel for Appellant :- Ajeet Kumar Singh, Ravindra Singh

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

1. This criminal appeal has been filed under Section 14-A(2) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 to set aside order dated 12.1.2024 passed by Addl. Sessions Judge/Special Judge, SC/ST (P.A.) Act, Hardoi in Bail Application No.3815 of 2023 arising out of case crime No.542 of 2023 under sections 366, 376 I.P.C., 3/5(1) U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 and 3(2)(v) of SC/ST (P.A.) Act, P.S. Sursa, district Hardoi.

2. Learned A.G.A. submits that notice to the complainant has been served. None appears for the complainant.

3. Heard appellant's counsel and learned Additional Government Advocate for the State as well as perused the record.

4. In the prosecution case, it is alleged that the accused appellant along with his mother enticed the victim aged about 18 years and forced her to change her religion and forcibly administered her cow beef. She escaped from the clutches of the accused and reached home 5-6 days before. It is further alleged that the accused applicant along with co-accused persons were roaming around the village of the complainant for two days and were threatening that in case they do not get the victim, they would take some other girl of the village.

5. Learned counsel for the appellant submits that while giving statement under section 161 CrPC, the victim has not supported the prosecution story. However, improvement has been made by her while giving statement under section 164 CrPC. She stayed with the applicant as per her statement under sections 161 and 164 CrPC for a period of five months without raising any alarm. She is major and thus was a consenting party. The applicant is in jail since 10.12.2023.

It is further submitted that there is no possibility of the appellant of fleeing away after being released on bail or tampering with the witnesses. In case the appellant is enlarged on bail, he shall not misuse the liberty of bail.

6. Learned A.G.A. has opposed the bail application and submitted that the victim was pregnant and delivered a dead baby, however, in response to the query made by the Court, he submits that no DNA test has been conducted. .

7.Considering totality of facts and circumstances of the case, varied statement of the victim under sections 161 and 164 CrPC, lack of any scientific evidence or any other corroborative material, as also the judgment in Javed Gulam Nabi Shaikh versus State of Maharashtra Criminal Appeal No.2787 of 2024, reported in (2024)9 SCC 813, I am of the view that the learned court below has failed to appreciate the material available on record.

8.In view of above, the order of rejection of bail passed by the court below is liable to be and is hereby set aside.

9.Accordingly, the appeal is allowed.

10.Let the appellant/applicant be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

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

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

(iii) The applicant 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 applicant 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 applicant 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 applicant 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 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

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