

**Court No. - 16**

**Case :-** CRIMINAL APPEAL No. - 2701 of 2024

**Appellant :-** Heeralal

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

**Counsel for Appellant :-** Manoj Kumar Singh

**Counsel for Respondent :-** G.A.,Mohan Singh

**Hon'ble Karunesh Singh Pawar,J.**

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

None appears for the complainant.

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 23.07.2024 passed in Bail application No.1631/12A/2024, arising out of case crime No.195/2023, under Sections 376, 326-A, 452, 323, 504, 506 I.P.C. and Sections 3(2)(s), 3(2)(5a), 3(2)(5) of S.C./S.T. Act, Police Station Fakharpur, District Bahraich.

It is alleged in the prosecution case that on 31.05.2023 the applicant entered my house due to some old resentment and started beating my daughter with a stick at around 8 o'clock in the night and poured some inflammable substance to spoil the face of my daughter, due to which the face of my daughter got burnt. On hearing the noise many people ran to intervene, the opponent started hurling caste related abuses and threatened to kill.

Learned counsel for the appellant while pressing the appeal submits that, the appellant has been falsely implicated in this case. Nothing as claimed by the prosecution has been committed by the appellant.

It is contended on behalf of the appellant that F.I.R. has been lodged by the mother of the victim on the basis of the information given by the victim still there is no allegation under Section 376 IPC which shows that Section 376 IPC has been added after thought. The victim was medically examined wherein it was found that she has received simple injuries on the face however, they do not attract Section 376 IPC. The

statement of the prosecutrix under Section 161 Cr.P.C. shows that she became unconscious due to some intoxicating substance administered by the appellant and when she opened her eyes she saw appellant running with two accused persons. She has stated that she does not know what happened. While giving statement under Section 164 Cr.P.C. she has made improvement. She has again stated that she does not remember what happened and what has been done by the appellant with her. The same statement has been given by the victim before the court. The victim is major 31 years old lady. From perusal of the medical report, it reveals that there are no injury on the private part of the victim. The offence will not travel beyond Section 324 IPC. No offence under Section 376 IPC is made out. There are no chance of tampering the prosecution witness. Trial is going on at a very slow pace. Appellant has explained the criminal history in para 28 of the bail application.

It is further submitted that, the appellant is languishing in jail in this matter since 04.06.2023. Charge-sheet in the matter has already been submitted. 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. opposes the prayer for bail, but could not confront the factual submissions made by the learned counsel for the appellant-applicant.

Considering the facts and circumstance of the case, statement of the victim under Sections 161 & 164 Cr.P.C., period of incarceration gone into by the appellant and till date only two prosecution witnesses have been examined so also the judgment passed by Hon'ble Supreme Court in the case of ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and another ; Criminal Appeal No.2787 of 2024*** and without commenting upon merits, 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 23.07.2024 passed in Bail application No.1631/12A/2024, arising out of case crime No.195/2023, under Sections 376, 326-A, 452, 323, 504, 506 I.P.C. and Sections 3(2)(s), 3(2)(5a), 3(2)(5) of S.C./S.T. Act, Police Station Fakharpur, District Bahraich, is set aside.

Let the appellant-applicant ***Heeralal*** 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 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.

The pending application, if any, too stands disposed of.

**Order Date :- 20.12.2024**

Saurabh Yadav/-