

Court No. - 16

Case :- CRIMINAL APPEAL No. - 3673 of 2024

Appellant :- Ankit Mishra

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

Counsel for Appellant :- Arshad Hafeez Khan, Dinesh Kr. Sharma, N.K. Pandey, Rajesh Kumar Pathak

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

Although notice has been served on the complainant, however, no one has appeared on behalf of the complainant.

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 14-A(2) the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to set aside the impugned order dated 25.9.2024 passed in Bail application No. 3066 of 2024 in Case Crime No.318 of 2024 under Section 69, 351(2) BNS and Section 3(2)(v) S.C./S.T. Act, Police Station Haidargarh, District Barabanki.

In the prosecution case, it is alleged that the victim who is aged about 19 years was in relationship with the applicant who promised the victim and took him/her into confidence and thereafter both of them had made physical relationship however when she asked him to marry he used to it on 1.9.2024. It is alleged that Ankit has raped her and refused to marry her on the pretext of her lower caste.

Learned counsel for the applicant submits that the statement of the victim under Section 180 BNSS and 183 BNSS are at variance. The victim was the consenting party and major. The relationship with the applicant has been admitted by the victim. The victim has refused to undergo internal medical examination. In the ossification test the age of the victim is 18 years. The

applicant is languishing in jail since 9.9.2024.

It is contended on behalf of the appellant 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 dispute the factual submissions made by the learned counsel for the appellant-applicant.

On due consideration to the submissions advanced, perusal of the record, varied statements of the victim under Section 180 Cr.P.C. and 183 Cr.P.C., refusal to undergo medical examination and admitted relationship with the victim and the applicant for the last one year so also the period of incarceration gone into by the applicant and the fact that the applicant has no criminal history and without commenting upon merits, I am of the view that the learned court below has failed to appreciate the material available on record.

Accordingly, the appeal is allowed and the impugned order dated 9.9.2024 is set aside.

Let the appellant-applicant **Ankit Mishra** involved in the aforesaid case be released on bail on furnishing a personal bond with two heavy 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 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