

Court No. - 29

Case :- CRIMINAL APPEAL No. - 3338 of 2023

Appellant :- Vishal Jaiswal

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt.
Lko. And 2 Others

Counsel for Appellant :- Umeshwar Pratap Pandey

Counsel for Respondent :- G.A.

Hon'ble Ajay Bhanot,J.

This criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant with the prayer to set aside the bail rejection order dated 04.11.2023 passed by the learned Special Judge SC/ST Act, Gonda in Case Crime No. 442 of 2023 under Sections 376, 504, 506 IPC and Section 3(1)(Da) (Dha) and 3(2)(v) of SC/ST Act, Police Station Nawabganj District Gonda. The applicant-appellant is in jail since 13.09.2023.

The bail application of the appellant was rejected by the learned trial court on 04.11.2023.

The following arguments made by Shri Umeshwar Pratap Pandey, learned counsel assisted by Shri Dipanshu Sharma, learned counsel on behalf of the appellant, which could not be satisfactorily refuted by and Shri Nikhil Singh, learned AGA from the record, entitle the applicant for grant of bail:

1. The victim and the appellant were intimate and had a consensual physical relationship.

2. The F.I.R. is the result of the relationship between the appellant and victim going awry.
3. The appellant never gave a plighted word to marry the victim.
4. The criminal proceedings are being leveraged to force the appellant to marry her and to extort money from him.
5. The victim was never confined or bound down in any manner. The victim was present at public places. She did not raise an alarm nor did she resist the appellant. Her conduct shows that she was a consenting party.
6. Medical evidence produced by the prosecution does not corroborate commission of rape by the appellant with the victim.
7. The learned trial court neglected to consider these relevant facts which were supported by material evidences in the record.
8. Prosecution evidence does not connect the appellant with the offence.
9. The appellant does not have any criminal history apart from the instant case.

In the light of the preceding discussion and facts and circumstances of the case and in view of the nature of the offence and evidence the appellant has made out a case for bail. The trial court erred in rejecting the bail application. The impugned order dated 04.11.2023

suffers from infirmity and illegality and the same is liable to be set aside and the appeal is to be allowed.

Accordingly, the appeal is allowed and the impugned order rejecting the bail application of the appellant is set aside.

Let the appellant- **Vishal Jaiswal** be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

- (i) The appellant will not tamper with the evidence or influence any witness during the trial.
- (ii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 15.3.2024

Dhananjai