

05.11.2024
Sl. No.60
akd
[Rejected]

C. R. A. (DB) 215 of 2024 [ASSIGNED]

In Re: An appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act filed on 26.07.2024 arising out of Sandeshkhali Police Station Case No.39 of 2024 dated 19.02.2024 under Sections 342/376D/506 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

And

In Re: **Amir Ali Gazi**
... .. Appellant

Mr. Milon Mukherjee .. Sr. Advocate
Mr. Dattatreya Dutta
... .. for the appellant

Mr. Kallol Mondal
Mr. Krishan Ray
Mr. Souvik Das
Mr. Anamitra Banerjee
Mr. Akbar Laskar
Ms. Isita Kundu
... .. for the de-facto complainant

Ms. Rituparna Ghose De
Ms. Suchismita Dutta
... .. for the State

1. It is submitted on behalf of the appellant that he is in custody for about 254 days. It is further submitted there is inordinate delay in lodging FIR. Allegation of gang rape is a figment of imagination and bereft of material particulars with regard to date and time. Husband of the victim has not been cited as a witness in the charge sheet. Statement of the victim before Magistrate has also not been referred to in the charge sheet. One of the co-accused is absconding. There is no possibility of commencement of trial. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits statement of the victim lady was recorded before Magistrate. Her husband has also been examined. She further submits co-accused

is absconding which is delaying progress in trial. In the event the appellant is released on bail it shall have severe impact on the vulnerable witness i.e. the victim and have deleterious impact on trial.

3. Learned Advocate for the de-facto complainant strongly opposes the prayer for bail and submits appellant and his associates are powerful and influential persons in the locality. They have overwhelming influence over local police administration. As a result the local police station did not respond to the complaints of the victim. Even while the appellant is in custody, his son threatened the son of the victim with dire consequences in the event her mother deposed against the appellant. A separate criminal case has been registered.

4. The prosecution case portrays a distressing picture where a hapless victim had to knock at various doors to seek legal redress against the most heinous crime perpetrated on her. In her further statement to police the victim stated a couple of days after the *Kali Puja* in the year 2022, her husband was abducted by the appellant and his associates. He was detained at their poultry farm. When the victim went there, she was forcibly raped. 2-3 days later appellant and his associates again asked her to come to the party office but she refused. In order to exert pressure on her, the *Toto* which she used to ply for livelihood was stopped and she was compelled to go to the party office where she was repeatedly raped. She was continuously threatened and was unable to promptly go to the police station. In the FIR she stated when she ultimately went to the police station, the police suggested her to settle the matter. Her statement has also been recorded before Magistrate.

5. From the aforesaid materials it is evident that victim has given a graphic chronology of events in respect of repeated acts of rape by the

appellant and his associates by use of threat, coercion and unfortunate connivance of police administration. Her statements are corroborated by other statements on record.

6. Given this situation, we are unable to accept the submission of Mr. Mukherjee that the version of the victim recorded before police and Magistrate is bereft of material particulars rendering it vague and inherently improbable.

7. It is also relevant to bear in mind a case of gang rape attracts the statutory presumption under Section 114A of the Indian Evidence Act (Section 120 of Bharatiya Sakshya Adhiniyam, 2023).

8. With regard to the period of detention suffered by the appellant we note investigation is complete and trial has been stalled due to abscondence of a co-accused viz. Bhanu Mondal who is said to be an associate of the appellant. In the *interregnum* it is alleged appellant's son had threatened the victim's son with dire consequences if she deposed against his father. A separate criminal case being Sandeshkhali Police Station Case No.264 of 2024 dated 04.06.2024 under Sections 341/323/506 IPC has been registered.

9. At this crucial stage where the vulnerable witness i.e. the victim is yet to be examined, allowing the bail prayer of the appellant would have a demoralizing and chilling impact on her who has already been pulverized by the apathy and indifference of local police administration. In fact, the defects pointed out by Mr. Mukherjee in the charge sheet viz. non-disclosure of the statement of the victim before Magistrate or non-citing of her husband as a witness show the palpable indifference on the part of the police officer who is entrusted with the investigation of the case.

10. However, the lapses agitated by Mr. Mukherjee though disclosing investigatory indifference do not go to the root of the prosecution case and render it improbable or lame.

11. In conclusion, we hold gravity of offence, power and influence of the appellant and his associates over local administration, continued threats held out by the members of his family and the cumulative impact of these aspects on the vulnerable witness i.e. the victim who is yet to be examined do not justify grant of bail to the appellant.

12. The prayer for bail of the appellant is rejected at this stage.

13. The appeal is accordingly, disposed of.

14. We direct the Director General of Police, West Bengal to supervise further investigation and ensure prompt apprehension of absconding accused and effective prosecution in a free and fair manner.

15. We also direct the trial Judge to ensure immediate apprehension of the absconding accused and in the event his presence cannot be secured in spite of compliance of Section 356(2) of BNSS to declare him as proclaimed offender with no immediate prospect of arrest and proceed to hold trial under Section 356 of the Bharatiya Nagarik Suraksha Sanhita, 2023 against the appellant and the absconding accused *in absentia*.

16. Director General of Police, West Bengal shall ensure adequate police protection is given to the victim and her family members immediately.

17. District Legal Services Authority shall take necessary steps for counseling as well as release of interim compensation to the victim as per law.

18. Parties shall communicate a copy of this order to the Director General of Police, West Bengal as well as Secretary, District Legal Services Authority for due compliance.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)