

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.258 of 2024

Gaurav Joshi

.....Appellant

Versus

State of Uttarakhand

.....Respondent

With

Criminal Appeal No.259 of 2024

Sumit Rautela

.....Appellant

Versus

State of Uttarakhand

.....Respondent

Mr. Vikas Bahuguna, counsel for the appellant.

Mr. Deepak Bisht, Deputy A.G. for the State.

Dated : 05.09.2024

Hon'ble Vivek Bharti Sharma, J. (Oral)

2. Since both the appeals have been filed against the common impugned judgment and order, thus, they are being decided by this common judgment.

3. Counsel for the appellants/accused would submit that the present criminal appeals under Section 14A(2) of *The Scheduled Castes & The Scheduled Tribes (Prevention of Atrocities) Act, 1989* (hereinafter referred to as 'the Act') have been filed by the appellants/accused with the prayer that the appellants/accused be enlarged on bail; that, the Sessions Judge, Nainital vide impugned order dated 15.05.2023 has rejected the bail application of the appellants/accused in Case Crime

No. 39 of 2023, under Sections 376D, 506 IPC and Section 3(2)(V) SC/ST Act, Police Station Mukhani, Haldwani, District Nainital.

4. Counsel for the appellants/accused would submit that an F.I.R. was lodged on 07.02.2023 by the complainant against the present appellants/accused alleging therein that on 05.02.2023, when the sister of the complainant, i.e. the *prosecutrix/victim* who was aged about 17 years went to market then the appellant/accused Gaurav Joshi enticed his sister and took her to the forest and thereafter, appellant/accused Gaurav Joshi called his friend i.e. co-accused Sumit Rautela and both the appellants/accused made forceful physical relations with his sister and also threatened her that if she disclosed the said incident to anyone then they would kill her and her family members and when his sister informed the complainant about the said incident, he lodged the complaint against the appellants/accused.

5. Counsel for the appellants/accused would further submit that the F.I.R. has been lodged with a delay of two days as the incident had taken place on 05.02.2023, whereas the F.I.R. was lodged on 07.02.2023; that, the appellants/accused as well as the prosecutrix/victim knew each other since long as they were living in the same vicinity; that, the complainant was not happy with the said friendship of his sister with the appellants/accused, therefore, he has falsely implicated the appellants/accused in the instant crime.

6. Counsel for the appellants/accused would further submit that both the appellants/accused are innocent persons; that, the appellants/accused are in jail since 08.02.2023; that, there is no independent witness of the alleged crime; that, the appellants/accused have not made any forceful physical relations with the prosecutrix/victim as the Doctor, who conducted the medical examination of the prosecutrix/victim has clearly stated in his statement that there was no external marks or stretch mark, neither

any blood stains nor any hymen was found in the private part of the prosecutrix/victim; that in absence of same, there is no definite opinion that the rape has been committed upon the prosecutrix/victim.

7. Counsel for the appellants/accused would further submit that so far as Section 3(2)(v) of the Act is concerned, the appellants/accused never insulted or uttered caste related words and in absence of the same, the said Section cannot be attracted against the appellants/accused; that, the prosecution has utterly failed to produce any FSL/pathological report to substantiate the offences alleged against the appellants/accused, therefore, the prosecution has failed to prove its case beyond reasonable doubt; that, there is no chance of tampering the evidence by the appellants/accused, therefore, the appeal may be allowed and the appellants/accused be enlarged on bail during the pendency of the trial.

8. *Per contra*, counsel for the State would submit that serious allegations have been leveled against the appellants/accused; that, the court below while rejecting the bail of the appellants/accused has specifically held that as per the record available, *prima facie* offence against the appellants/accused is made out; that, the prosecutrix/victim in her statement recorded under Section 161 Cr.P.C. & Section 164 Cr.P.C. has supported the prosecution case; that, though the complainant has admitted in his statement that he was not happy with the friendship of the prosecutrix/victim with the appellants/accused but it has been established by the prosecution that the appellants/accused forcefully made physical relations with the prosecutrix/victim, therefore, the case under Section 376-D I.P.C. is made out against the appellants/accused.

9. State counsel would further submit that the delay in lodging the F.I.R. is merely of two days and its effect can be considered during trial; that, this is not a ground to grant any relief to the

appellants/accused; that, the medical opinion of a doctor in the cases of rape is of no relevance and the testimony of the prosecutrix/victim alone is sufficient to prove the guilt against the accused persons, therefore, the appellants/accused are not entitled for any relief at this stage and the present appeal is liable to be dismissed.

10. Heard learned counsel for the parties and perused the material available on record.

11. It has been argued by the learned counsel for the appellants/accused that the F.I.R. has been lodged after a delay of about two days and prosecution has failed to explain the reason for the said delay.

12. At this stage, it is apt to refer certain observations made by Hon'ble Apex Court in the case of *Karnel Singh Vs. State of MP (1995) 5 SCC 518*, wherein the Hon'ble Supreme Court, while reacting to the argument on considerable delay in lodging the F.I.R. has observed that Indian women are slow and hesitant in making complaints regarding such events and mere delay will not render the complaint false and reluctance to go to the police is because of the society's attitude towards such women, therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false.

13. Also in the case of *State of Punjab Vs Gurmit Singh, (1996) 2 SCC 384*, the Hon'ble Supreme Court, while rejecting the plea of delay in lodging the F.I.R. has held that in the cases of sexual offences, delay in lodging the FIR can be due to a variety of reasons, particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family.

14. Perusal of the impugned order would reveal that the trial court while rejecting the bail application of the appellants/accused has

observed that the prosecutrix/victim in her statement recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. has fully corroborated the prosecution version and has reached to a conclusion that if the appellants/accused are enlarged on bail in a matter involving gang rape of the prosecutrix/victim, who belongs to the scheduled caste category, then, the possibility that the appellants/accused may flee and may tamper the prosecution evidence and further influence the witnesses, cannot be denied.

15. After having given a thoughtful consideration to the entire factual matrix of the case, this Court is of the opinion that the rejection of the bail application of the appellants/accused appears to be perfectly justified at this stage.

16. In view of the above and without expressing any opinion on the final merits of the case, the criminal appeals deserve to be dismissed and the same are hereby dismissed.

(Vivek Bharti Sharma, J.)

05.09.2024

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