

Court No. - 82

Case :- CRIMINAL APPEAL No. - 9711 of 2024

Appellant :- Sushil Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Amit Daga, Vinod Kumar Yadav

Counsel for Respondent :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed today is taken on record.
2. Counter affidavit filed on behalf of the State is also taken on record.
3. This criminal appeal under Section 14-A (2) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant - **Sushil Yadav** with the prayer to set aside the bail rejection orders dated 5.8.2024 and 4.9.2024 passed by the Additional Sessions Judge (POCSO Act), Court No.3, Prayagraj, and to release the appellant on bail in case crime no. 178 of 2024 under Sections 376-D, 506 IPC and Section 3(2)5, 3(1)(r) of SC/ST Act, P.S. Phoolpur, District Prayagraj.
4. Heard learned counsel for the appellant as well as the learned A.G.A. for the State and perused the entire record.
5. In the F.I.R. it was alleged that rape was committed with the victim / informant of this case by the present appellant and one unknown person when she had gone to ease herself on 16.6.2024 at 11.00 p.m. F.I.R. was lodged and investigation started which culminated into charge sheet.
6. It is submitted by the learned counsel for the appellant that the appellant is innocent and has been falsely implicated in this case. He has not committed the present offence. Alleged offences are not attracted against him. It is further submitted that the entire prosecution story is based on false facts and on account of village animosity the appellant has been falsely implicated in the present matter. Though charge sheet has been submitted by the police and during investigation statements of the victim under Sections 161 and 164 CrPC were recorded but as a matter of fact when the prosecutrix was examined before the Court as PW-1 she resiled

from all her previous statements recorded during investigation and also from the contents of the F.I.R. itself. She has categorically denied of any incident of rape with her. She has been declared hostile by the Court and did not support the prosecution version on any point. The appellant has no criminal history to his credit. The appellant is in jail since 20.6.2024. It is further submitted that the Court concerned while passing the impugned orders did not take into account the facts and evidence available on record in right perspective and erred in passing the same. It is lastly submitted that the impugned orders rejecting the bail application of the appellant suffer from infirmity and illegality warranting interference by this Court.

7. On the other hand, learned A.G.A. opposed the prayer but however could not dispute this factual aspect of the matter that the victim of this case has not supported the prosecution version on any point during his examination before the Court and she has been declared hostile.

8. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

9. Having regard to the facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, the fact that the victim of this case has turned hostile and did not support the prosecution case before the Court, the Court is of the opinion that the appellant has made out a case for bail. The Court below erred in rejecting the bail application of the appellant. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is liable to be allowed.

10. Accordingly, the appeal is **allowed** and the impugned orders rejecting the bail application of the appellant are set-aside.

11. Let the aforesaid appellant involved in aforesaid case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(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 will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) 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.

12. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

13. Before parting, the Court owes its duty to remind the trial court that a Presiding Officer sitting in the Court at the time of recording the evidence must not act like a mere spectator and tape-recorder. He must participate in the proceeding of recording of evidence. If any witness is declared hostile by the prosecution, the court itself must ask relevant questions to the witness and if it finds sufficient grounds, it must proceed against such witness in accordance with law. From a perusal of the statement of PW-1, copy whereof has been brought on record by way of supplementary affidavit, it reveals that no role was played by the Presiding Officer of the Court concerned when the evidence of star witness, the prosecutrix, was being recorded.

14. Office is directed to send copy of this order to the concerned Presiding Officer for future guidance.

Order Date :- 23.1.2025

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