

Court No. - 76

Case :- CRIMINAL APPEAL No. - 5119 of 2021

Appellant :- Suresh Yadav @ Suresh Kumar Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Awadhesh Kumar Sharma, Sharda Vishwakarma, Swati Agrawal Srivastava

Counsel for Respondent :- G.A.

Hon'ble Rahul Chaturvedi, J.

(Criminal Misc. Bail Application No.... of 2021)

Heard Ms. Swati Agrawal Srivastava, learned counsel for the appellant as well as learned A.G.A for the State and perused the record.

This criminal appeal under Section 14 A (2) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "S.C./S.T. Act") has been filed assailing the legality and validity of the impugned order dated 21.10.2021 passed by the learned Special Judge (SC/ST Act)/Additional Sessions Judge, Allahabad while rejecting the Bail Application No.6263 of 2021 (State vs. Dinesh Yadav @ Michai Yadav and others) in Case Crime No.780 of 2021, under Sections 328, 343, 376-D, 504, 506 I.P.C. and Section 3(2)V of the S.C./S.T. Act, Police Station-Naini, District-Prayagraj.

There are two connected appeals having Criminal Appeal No. 4767 of 2021 and Criminal Appeal No. 5119 of 2021. The genesis of both these two criminal appeals are from one and same F.I.R. and for the sake of brevity both the appeals are decided by a common order.

The instant criminal appeal No.5119 of 2021 is targeted against the judgement and order passed by Special Judge (SC/ST Act)/Additional Sessions Judge, Allahabad by rejecting Bail Application No.6263 of 2021 on 21.10.2021 whereas in another criminal appeal bail of Suresh Yadav @ Suresh Kumar Yadav was rejected vide Bail Application No. 6263 of 2021 was rejected on the same day i.e. 21.10.2021. Both of them are accused of Case Crime No. 780 of 2021, under Sections 328, 343, 376-D, 504 and 506 I.P.C. and 3(2)V of SC/ST Act, Police Station Naini, District Prayagraj and both of these appellants are behind the bar since 11.10.2021.

The counter affidavit has been filed by the State. Learned counsel for the appellant is not proposing to file any rejoinder affidavit. The order-sheet indicates that the notices were duly served upon opposite party no.2 personally way back in the

month of December, 2021 but neither they have engaged any counsel nor have filed any counter affidavit to represent their case. Taking the service to be sufficient upon them with the help & aid of learned AGA, Court is proposing to decide both the appeals by a common order.

Learned counsel for the appellant drawing the attention of the Court to the F.I.R. lodged by Neha Bhartiya, who herself is the victim. As per the allegations made in the F.I.R. on 10.10.2021 for the incident said to have been taken place on 04.10.2021 against Suresh Yadav, Rakesh Yadav and Mirchai Yadav. All the three named accused persons are the real brothers and are the sons of Baddu Lal Yadav. The genesis of the with the prosecutrix went along with her mother to a temple. Her mother was about ten steps ahead of her. All of sudden in a Bolero Car she was kidnapped by some unknown persons, who made her unconscious and thereafter confined her into a room. They used to administer her liquor and misbehaved with her time and again. This process had continued for another period of one week and thereafter left her in a abandon condition near the railway crossing. She has positively accused all three named persons for committing gang rape upon her.

Learned counsel for the appellant submits that the victim/informant and her mother are in habit of making such type of frivolous F.I.Rs. On the earlier occasion the mother of the victim Smt. Baby, has lodged one F.I.R. No. 470 of 2021, on 25.06.2021, under Sections 365, 452, 323, 504, 506, 392 I.P.C. and Section 3(2)(Va) of SC/ST Act against Vinod Yadav, Milan Yadav and Ravi Prakash Yadav, but the police after investigation has submitted a final report on 10.08.2021.

Coming to the text of the present case that all three named accused persons are real brothers, who have been charged for committing gang rape. Levelling such a serious allegation the lady has conveniently shuns away and never admitted for any medical examination so as to establish the fact of gang rape upon her. This is the serious matter wherein the attending circumstances, it is required to establish the authenticity of the allegations. It is mandatory and obligatory on the part of the victim to get herself medically examined so as to substantiate the allegation of rape. It is not her choice to admit or not to admit for the medical examination. As per annexure No. SA-1 of the supplementary affidavit she has positively denied to get her medical examined done. In her statement recorded under Section 161 Cr.P.C. first informant states that she is a married lady but she herself deserted her husband on account of ill treatment extended by her husband. Hon'ble Apex Court in its various pronouncements have clearly opined that it is risky to

blindly rely upon victims 161 and 164 Cr.P.C. statements without having any supporting, independent documentary proof or any other confidence generating material collected during investigation.

Learned A.G.A. has vehemently opposed the prayer for bail by making a mention that this a case of gang rape where the dignity and honour of an lady has been outraged by the named accused persons.

After levelling such a serious allegation against three real brothers, contentions raised that it is highly improbable that three real brothers could commit a gang rape with a lady, coupled with the fact that she has never admitted for any medical examination so as to connect the allegation of rape upon her.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, the period of detention already undergone by the appellant and also without expressing any opinion on merits of the case, I am of the view that the appellant has made out a case for bail.

Let the appellant- **Suresh Yadav @ Suresh Kumar Yadav**, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) THE APPELLANT WOULD FULLY COOPERATE IN THE CONCLUSION OF TRIAL WITHIN ONE YEAR AND ANY TEMPERING OR WILLING TACTICS ON THE PART OF THE APPELLANT TO DELAY THE TRIAL WOULD WARRANT THE AUTOMATIC CANCELLATION OF BAIL.

(ii) THE APPELLANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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.

(iii) 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 IPC.

(iv) IN CASE, THE APPELLANT MISUSE THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPELLANT 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 IPC.

(v) THE APPELLANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPELLANT IS DELIBERATE OR WITHOUT SUFFICIENT CAUSE, THEN IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT SUCH DEFAULT AS ABUSE OF LIBERTY OF BAIL AND PROCEED AGAINST HIM IN ACCORDANCE WITH LAW.

However, it is made clear that any wilful violation of above conditions by the appellant, shall have serious repercussion on his bail so granted by this court.

Keeping in view that though the complainant belongs to the scheduled caste community and as per arguments of learned counsel for the complainant that the accused/appellant who belongs to a higher caste, after his release, may create all sorts of impediments in the smooth trial and may extend allurements and threats to the informant, his family members as well as other witnesses, thus, it is directed that in such eventuality, all these complaints may be raised by the complainant before the Superintendent of Police concerned who would examine objectively after having reports from his agencies at the earliest with regard to threat prospective of complainant and his family members and use his own discretion in the matter, if it desirable, then during trial may provide security to complainant and his near family members.

Accordingly, the appeal succeeds and the same stands ALLOWED. Impugned order dated 21.10.2021 passed by the learned Special Judge (SC/ST Act)/Additional Sessions Judge, Allahabad, is hereby set aside.

Order Date :- 13.1.2022/Abhishek Singh