

Court No. - 67

WWW.LIVELAW.IN

Case :- CRIMINAL APPEAL No. - 1157 of 2021

Appellant :- Durgesh Tripathi @ Ram

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rajesh Kumar Srivastava, Rajesh Dwivedi, Ugrasen Kumar Pandey

Counsel for Respondent :- G.A., Irshad Ahmad

Hon'ble Rahul Chaturvedi, J.

Counter affidavit filed by learned A.G.A. is taken on record.

Heard Shri Rajesh Dwivedi, learned counsel for the appellant; Shri Irshad Ahmad, learned counsel for the opposite party no.2 as well as Shri Ghanshyam Kumar, learned A.G.A for the State and perused the record.

This criminal appeal under Section 14 A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "S.C./S.T. Act") has been filed for setting-aside the bail rejection order dated 22.01.2021 passed by Special Judge, SC/ST Act, Kanpur Nagar in Second Bail Application No.212 of 2020 (Durgesh Tripathi @ Ram vs. State of U.P) in Case Crime No.496 of 2020, under Sections 376, 504, 506 I.P.C. and Section 3(2)5 of SC/ST Act, Police Station-Gowaltoli, District-Kanpur Nagar.

It is submitted by learned counsel for the appellant that from the text of the F.I.R. it is clear that the appellant is sole named accused-appellant. The F.I.R. was got registered by the widow lady on 4.12.2020, whose husband had expired on 19.12.2016, thereafter, she developed certain amount of intimacy with the appellant. The informant further states in the F.I.R. that she has fallen in love with the appellant and on the false pretext of marrying her, he established physical relationship with her, which lasted up to two years without any resistance or objection from her. Thereafter, the appellant has wriggled out from his promise and after abusing and humiliating the victim, he extended threats for her life. It is contended by learned counsel for the appellant that this is a case of establishing physical relationship on the false pretext of marriage. In her statement u/s 164 Cr.P.C., the victim has also broadly admitted and reiterated the version of the F.I.R., but from the medical report it is clear that she has declined to admit her to get her medically examined, so as to establish the fact of rape upon her as alleged in the F.I.R. Learned counsel for the appellant has also cited the judgments of Hon'ble Apex Court given in the cases of **Dr. Dhruvaram Murlidhar Sonar vs State of Maharashtra and**

others, 2019 AIR (SC) 327 and *Pramod Suryabhan Pawar vs State of Maharashtra, (2019) 3 SCC (Cri) 903*. It has also been submitted that the appellant is languishing in jail since 06.12.2020.

Shri Irshad Ahmad, learned counsel for the opposite party no.2 has opposed the submissions made by learned counsel for the appellant by making a mention that exploiting the condition of a destitute widow lady, a false promise was extended by the appellant and after winning over her confidence, he has mercilessly ravished her for two good years and thereafter ousted her from his life.

After hearing rival submissions of both the parties, it is clear that no doubt that victim is widow lady, aged about 35 years, but she must understand the far-reaching repercussions of a pre-marital sex with unknown person. Besides this, the victim has declined herself from any medical examination so as to ascertain the factum of rape upon her. Taking the guidance of the aforementioned judgements of Hon'ble Apex Court, the submissions made by learned counsel for the appellant, prima facie, appear quite appealing and convincing for the purpose of bail only.

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-***Durgesh Tripathi @ Ram***, 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 22.01.2021 passed by Special Judge, SC/ST Act, Kanpur Nagar, is hereby set aside.

Order Date :- 6.10.2021

M. Kumar