

**Court No. - 65**

**Case :-** CRIMINAL APPEAL No. - 3332 of 2022

**Appellant :-** Raju Saini

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Raj Kumar Kesari

**Counsel for Respondent :-** G.A.,Gaurav Dwivedi

**Hon'ble Sanjay Kumar Pachori,J.**

Heard Shri Raj Kumar Kesari, learned counsel for the appellant, Sri Gaurav Dwivedi, learned counsel for the second respondent, Shri R.P. Singh, learned A.G.A. for the State and perused the material on record.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant, **Raju Saini**, to set aside the impugned order dated 06.05.2022, whereby the Special Judge (SC/ST Act), Hapur has rejected the bail application No. 1246 of 2022 of the appellant moved by him in Case Crime No. 119 of 2022, under Sections 328, 376, 506 IPC and Section 3(2)(v), of the SC/ST Act and Section 67-A Information Technology Act, Police Station Babugarh, District Hapur.

Brief facts of the case are that the first information report dated 12.04.2022 has been lodged by the victim against the appellant under Sections 328, 376, 506 I.P.C, Section 3(2)(v) of the SC/ST Act and Section 67-A of the Information Technology Act, stating therein that she is student of B.A. Ist year and went Cybercafe of the appellant to get her form filled up of B.A and Scholarship form , in the meantime, she was offered Cold drink mixed with intoxicated medicine and he got prepared her forged/duplicate Adhar Card and after consuming the intoxicated medicines, she lost her consciousness and then she was raped by the appellant and he also got prepared her obscene video and when she objected then he viraled the videos. On 09.03.2022, he abused her with caste derogatory words and threatened her with dire consequences.

After lodging the first information report, statement of the victim under Section 161, Cr.P.C. was recorded on 15.04.2022, The victim was examined on 12.04.2022. Statement of the victim under Section 164, Cr.P.C. was recorded . After

recording the statements of the other prosecution witnesses, charge sheet has been submitted against the appellant. The applicant has no criminal history to his credit. The appellant was arrested on 28.04.2022.

Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case due to ulterior motive. It is further submitted that the victim is 19 years old at the time lodging of the F.I.R. It is further submitted that victim went to Jhansi by public transport. It is further submitted that the victim has not supported the prosecution case in her cross examination as P.W.1.

It is further submitted that there is no possibility of the appellant of fleeing away after being released on bail or tampering with the witnesses. In case the appellant is enlarged on bail, he shall not misuse the liberty of bail.

**Per contra**, learned A.G.A. as well as learned counsel for the second respondent have supported the order passed by the Special Judge and vehemently opposed the prayer for grant of bail to the applicant. But he could not point out any material to the contrary. He further submits that in case the applicant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

After considering the facts of the present case it prima facie appears that;

(a) victim was 19 years old at the time of the lodging of the FIR;

(b) victim has not supported the prosecution case in her cross examination examined as P.W.-1 rather she stated that allegations levelled against the appellant in the F.I.R. were due to pressure mounted her family;

(c) appellant is languishing in Jail since 28.04.2022;

It is a settled law that while granting bail, the court has to keep in mind the nature of accusation, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, his role and involvement in the offence, his involvement in other cases and reasonable apprehension of the witnesses being tampered with.

Taking into account the totality of facts and keeping in mind,

the ratio of the Apex Court's judgment in the case of **State of Rajasthan v. Balchand @ Baliay (1977) 4 SCC 308, Gudikanti Narasimhulu And Ors., v. Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429, Ram Govind Upadhyay v. Sudarshan Singh & Ors., (2002) 3 SCC 598, Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., (2010) 14 SCC 496 and Mahipal v. Rajesh Kumar & Anr., (2020) 2 SCC 118**, the larger interest of the public/State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail. Hence, the present criminal appeal is allowed and impugned order dated 06.05.2022 is set aside.

Let appellant/applicant, **Raju Saini** 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 subject to the following conditions:

(i) The applicant 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.

(ii) The applicant shall not pressurize/intimidate the prosecution witnesses.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the applicant 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 in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the applicant, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the applicant along-with a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked ;

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

**Order Date :- 9.11.2022**

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