

Court No. - 64

Case :- CRIMINAL APPEAL No. - 3112 of 2021

Appellant :- Mohd. Wasif

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rajesh Kumar Roy
Sharma, Manvendra Singh

Counsel for Respondent :- G.A., Sandeep Kumar

Hon'ble Saumitra Dayal Singh, J.

1. Rejoinder affidavits to the counter affidavits filed by State and the informant, taken on record.

2. Heard Rajesh Kumar Roy Sharma learned counsel for the appellant; Sri Sandeep Kumar learned counsel for the informant; Sri Janardan Prakash learned AGA for the State and perused the material placed on record.

3. This criminal appeal under Section 14-A(2) of The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been preferred by the appellant with the prayer to set aside the order dated 07.7.2021, passed by learned Additional District & Sessions Judge/Special Judge POCSO Act Allahabad, in **Case Crime No. 286 of 2021, under Sections - 363, 376(3) IPC and Section 3/4 POCSO Act and Section 3(2)(5) SC/ST (Prevention of Atrocities) Act, Police Station - Dhoomanganj, District - Prayagraj**, whereby bail application of the appellant has been rejected.

4. At the outset, learned counsel for the appellant submits, against the FIR lodged on 09.4.2021, the appellant is in confinement since 27.5.2021; the appellant claims to have cooperated in the investigation. In any case he is not shown to have unduly evaded arrest; the appellant has no criminal history; chargesheet has already been submitted yet, trial has not commenced. Therefore, there is no hope of early conclusion

of the trial; on *prima facie* basis, it has been submitted that parties were known from before; the appellant also claims to be a young person; thus it has been submitted that on account of changed stand of the alleged victim girl which emerged forty one days after the FIR, the allegation of rape has emerged. Also, it has been submitted, the allegations of violation of SC/ST Act are general and made to lend colour to the story.

5. On the other hand, learned counsel for the informant has vehemently opposed the bail application; he states that the girl was under age; there is no pleading as to consent; at present the allegation of rape has been supported in the statement recorded under Section 164 Cr.P.C.; reference has also been made to the observation made in the medical report "painful urination". Learned A.G.A. has also opposed the prayer for bail of the appellant on similar lines.

6. Having heard learned counsel for the parties and having perused the record, keeping in mind the fact that parties were known from before and there does appear to be improvement offered as to the prosecution story, during the course of investigation. At present, the order passed by the learned court below rejecting the bail application filed by the appellant, cannot be sustained.

7. Without drawing any inference as to facts, in view of the above noted facts & submissions and having regard to the status of the evidence, as has been shown to exist on record, let the appellant be enlarged on bail at this stage.

8. Accordingly, this appeal is **allowed** and the impugned order dated 07.7.2021, rejecting the bail of the appellant is set aside.

9. Let the accused-appellant, namely, **Mohd. Wasif**, involved in the aforesaid crime be released on bail on his furnishing personal bonds and two heavy sureties each of the like amount to the satisfaction of Court concerned subject to the condition

that appellant shall cooperate in the trial and will not jump the bail.

10. It is made clear that, in the event of any attempt being made by the applicant to intimidate the witness or to tamper the evidence, the informant shall be at liberty to file a bail cancellation application supported by the relevant material, that application if filed, may be taken up on priority.

11. It is further made clear, in the event of any measure being adopted by the applicant to either intimidate the victim or to even make contact with her either personally or through electronic means or in any other means, it may result in immediate cancellation of bail being granted to the applicant.

Order Date :- 24.12.2021

Faraz