

(2024) 02 RAJ CK 0177
In the Rajasthan High Court
Case No : Criminal Appeal (SB) No. 79 Of 2024

Gaffar Khan @ Gafoor Khan

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 02-02-2024

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r)(s)(w)(ii), 3(2)(v), 14A(2)
Indian Penal Code, 1860 — Section 306, 376(1), 384, 450

Citation : (2024) 02 RAJ CK 0177

Hon'ble Judges : Kuldeep Mathur, J

Bench : Single Bench

Advocate : Chakravarti Singh Rathore, Mohd. Javed Gouri

Final Decision : Allowed

Judgement

Kuldeep Mathur, J

Heard learned counsel representing the appellant and learned Public Prosecutor. Perused the material available on record.

This appeal has been preferred on behalf of the appellant under Section 14A(2) of the SC/ST (Prevention of Atrocities) Amendment Act 2015 being aggrieved by the order dated 20.12.2023 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Cases, Balotra in Cr. Misc. Case No.341/2023 rejecting the bail application preferred on behalf of the appellant who is in custody in connection with FIR No.594/2022 registered at Police Station Balotra, District Barmer (now District Balotra), for the offences under Sections 450, 384, 376(1), 306 IPC and Sections 3(1)(r)(s)(w)(ii) and 3(2)(v) of the SC/ST Act.

Learned counsel for the appellant submitted that the appellant, who is aged about 23 years, has been falsely roped in a criminal case. Learned counsel submitted that the prosecutrix filed a written report dated 20.12.2022 stating inter alia that it was some time in the afternoon of 16.12.2022, while she was

alone in her house, the appellant came there and on the point of knife, committed sexual assault/rape with her and snapped her nude photographs. Prosecutrix disclosed the factum of rape to her husband Bhagga Ram. Bhagga Ram thereupon on 19.12.2022 committed suicide in their residential premises. She thus submitted a written report to SHO, Balotra asking him to lodge an FIR against the present appellant and investigate the matter.

Drawing attention of the Court towards the challan papers and the statements of the prosecutrix recorded before the competent criminal court as PW-3, learned counsel submitted that in the present case, there is no material available on record indicating that the appellant, in any manner, abetted Bhagga Ram to commit suicide and therefore, criminal liability against the appellant for the offence under Section 306 IPC cannot be fastened. Learned counsel further submitted that the prosecutrix is a mature, major and married woman. The prosecutrix was having consensual relationship with the present petitioner, however, on turning their relations strained, the appellant has been falsely implicated in the present case. Learned counsel submitted that though the prosecutrix, in her statements before the competent criminal court as PW-2, has denied the factum of she being in contact with the present appellant between 16.12.2022 to 18.12.2022, however, the CDR analysis attached by the investigating agency with the challan papers, clearly establishes that the prosecutrix was in constant touch with the appellant between 16.12.2022 to 18.12.2022 and at least, 48 telephone calls were exchanged between them.

Learned counsel submitted that though the prosecutrix, in her statements recorded before the competent criminal court as PW-1, has levelled allegation of sexual assault/rape against the appellant, however, her statements cannot be treated as gospel truth because the same do not match with the evidence available on record.

Lastly, learned counsel submitted that the appellant is in custody and the trial of the case is likely to consume sufficiently long time. On these grounds, he implored the Court to enlarge the appellant on bail.

Per contra, learned Public Prosecutor vehemently opposed the bail application.

Having considered the rival submissions, facts and circumstances of the case, this Court prima facie finds that sufficient evidence is available on record indicating that the appellant the prosecutrix were acquainted with each other from before. This Court also prima facie finds that during investigation, the investigating agency found that after the alleged date of incident i.e. 16.12.2022, the prosecutrix and the appellant were in constant touch with each other through their mobile phones. This Court prima facie does not find any material available on record indicating that obscene photographs of the prosecutrix were snapped by the appellant and she was threatened by the appellant to circulate the same on social media platforms. This Court prima facie does not find any material available on record indicating that the petitioner in any manner, abetted or

instigated the deceased Bhagga Ram to commit suicide. In the prima facie opinion of this Court, since the statements of the prosecutrix have already been recorded before the competent criminal court as PW-1, now there are no chances of she being influenced by the appellant.

Thus, without expressing any opinion on merits/demerits of the case, this Court is of the opinion that the appellant is entitled to be released on bail.

Consequently, the appeal is allowed. The order dated 20.12.2023 passed by learned Special Judge, SC/ST (Prevention of Atrocity) Cases, Balotra is set aside. It is ordered that the accused-appellant Gaffar Khan @ Gafoor Khan S/o Shri Jamal Khan arrested in connection with FIR No.594/2022 registered at Police Station Balotra, District Barmer (now District Balotra) shall be released on bail during pendency of the trial; provided he furnishes personal bond of Rs.50,000/- and two surety bonds of Rs.25,000/- each to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.