
(2017) 11 AHC CK 0049
In the Allahabad High Court
Case No : 4311 of 2017

Rajveer

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision : 29-11-2017

Acts Referred:

Indian Penal Code, 1860 &mdash, Section 354, Section 452

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 8

Protection Of Children From Sexual Offences Act, 2012 — Section 3 (2), 7, 8

Citation : (2017) 11 AHC CK 0049

Hon'ble Judges : Vijay Lakshmi

Bench : Single Bench

Advocate : V.K. Agnihotri

Final Decision : Allowed

Judgement

1. The present appeal has been preferred against the order dated 13.7.2017 passed by learned Additional Sessions Judge, Court No.4, Mainpuri, in Bail Application No.1011 of 2017 arising out of Case Crime No.122 of 2017, Rajveer Vs. State, under Sections 354, 452 I.P.C., 7/8 of Protection of Children from Sexual Offences and Section 3 (2) V SC/ST Act P.S.-Kurra, District-Mainpuri, whereby the bail application of the appellant has been rejected.

2. The record shows that the State had received notice of the appeal on 25.7.2017 through A.G.A. A perusal of the order sheet shows that vide order dated 18.8.2017, this Court had directed to issue notice to O.P. No.2 by FAX and as per office report dated 21.9.2017, based on Chief Judicial Magistrate's report, the notice was personally served on O.P. No.2 on 09.9.2017.

3. However, despite expiry of a considerable period, neither the State nor O.P. No.2 has filed any counter affidavit.

4. In aforesaid circumstances, I proceed to decide this appeal on merits on the

basis of available record.

5. Heard learned counsel for the appellant and the learned A.G.A. Perused the records.

6. It is submitted by the learned counsel for the appellant that the appellant is innocent and he has been falsely implicated in this case due to the reason that the father of the victim had borrowed Rs.1 lakhs as debt from the appellant but he did not return the money even after a lapse of two years. When the appellant demanded the same, he, with malafide intention lodged a false report against the appellant. It is further contended that initially, the F.I.R. against the appellant was lodged under Sections 354 I.P.C., Section 7/8 of Protection of Children from Sexual Offences Act and Section 3 (1) (11) SC/ST Act. However, during investigation, the police added Section 452 I.P.C. and substituted Section 3 (2) (v) SC/ST Act, in place of Section 3 (1) (11) SC/ST Act. Learned counsel for the appellant has vehemently contended that the offence under Section 3 (2) (v) SC/ST Act is not made out against the appellant and rest of the offences are not grave. However, the court below, without keeping in view the legal provisions, has mechanically rejected the bail application of the appellant. It is lastly submitted that the appellant has no criminal antecedent to his credit, he is languishing in jail since 31.5.2017, there is no likelihood of early disposal of trial and the appellant undertakes that if enlarged on bail, he will never misuse his liberty and will co-operate in the trial.

7. Learned A.G.A. has opposed the payer for bail.

8. Considered the rival submissions of learned counsel for the parties.

9. The appellant has been roped under Sections 354, 452 I.P.C., 7/8 of Protection of Children from Sexual Offences and Section 3 (2) (v) SC/ST Act.

10. Section 3(2)(v) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 enacts as under:- "whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more, against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. Before coming to any conclusion with regard to applicability of Section 3(2) (v) of SC/ST Act, 1989, in the present case, it appears expedient to have a look at maximum punishment as provided for under the sections in which the appellant has been roped in.

11. Section 8 of the POCSO Act, provides punishment for sexual assault, according to which:- "whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine."

Section 354 I.P.C. is punishable with imprisonment for a maximum period of five

years and fine.

12. Section 452 I.P.C. is punishable with a maximum period of imprisonment of seven years and fine.

13. Thus, it is very clear that none of the sections in which the applicant has been implicated, is punishable with more than 10 years. Hence, there is no application of Section Section 3 (2) 5 SC/ST Act in the present case.

14. Taking into consideration the aforesaid legal position and after perusing the record in the light of the submissions made at bar and taking an overall view of all the facts and circumstances of this case, the nature of accusations, severity of punishment in case of conviction, the period of detention already undergone, the unlikelihood of early conclusion of trial and without going into the merits of the case, this Court is of the view that the appellant may be enlarged on bail.

15. The appeal is allowed. The impugned order dated 13.7.2017 passed by learned Additional Sessions Judge, Court No.4, Mainpuri, is set-aside.

16. Let the appellant Rajveer, involved in the aforesaid Case Crime be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:- 1.The appellant will not tamper with the evidence.

2. The appellant will not indulge in any criminal activity.

3. The appellant will not pressurize/intimidate the prosecution witnesses and will co-operate in the trial.

4.The appellant will appear regularly on each and every date fixed by the trial court unless his personal appearance is exempted through counsel by the court concerned.

17. In case of breach of any conditions mentioned above, the trial court will be at liberty to cancel the bail of the appellant.