

(2024) 01 RAJ CK 0128
In the Rajasthan High Court
Case No : Criminal Appeal (SB) No. 2492 Of 1987

Sunil Kumar

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(b)(ii), 3(2)(v), 3(2)(vi), 14A
Indian Penal Code, 1860 — Section 120B, 201, 342, 376 D, 376(2)(n),
Code Of Criminal Procedure, 1973 — Section 161, 164, 439

Citation : (2024) 01 RAJ CK 0128

Hon'ble Judges : Kuldeep Mathur, J

Bench : Single Bench

Advocate : RJ Punia, Mukhtiyar Khan, Suresh Kumar Maru

Final Decision : Allowed

Judgement

Kuldeep Mathur, J

The instant appeal has been filed under Section 14A SC/ST (Prevention of Atrocities) Act on behalf of the appellant, who is in custody in connection with F.I.R. No.397/2022, registered at Police Station Dhorimana, District Barmer, for the offences under Sections 342, 376 D, 376 (2) (n), 201, 120B I.P.C. and sections 3(1)(b)(ii), 3(2)(v), (vi) of the SC and ST (Prevention of Atrocities) Act against the order dated 20.11.2023 passed by the learned Special Judge Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act Cases, Barmer whereby, the bail application preferred under Section 439 Cr.P.C. on behalf of the appellant was rejected.

The previous criminal appeal of the appellant was dismissed by this Court vide order dated 18.07.2023.

Heard learned counsel for appellant, learned Public Prosecutor and learned counsel for the complainant. Perused the material available on record.

Learned counsel for the appellant submitted that the appellant who is aged about 21 years has been falsely implicated in the criminal case. Drawing attention of the Court towards the statements of the victim 'M' recorded under Section 161 Cr. P.C. on 28.11.2022, learned counsel for the appellant submitted that since the victim was a deaf, dumb and disabled girl, therefore, the statements got recorded in the presence of special educator Kesrimal Kuldeep as per which the co-accused Harji Ram committed the offence. Attention of the Court was further drawn towards the statement of prosecutrix victim 'M' recorded under Section 164 Cr. P.C. recorded in the presence of special educator Smt. Parul Vaishnav on 16.12.2022 as per which, only one person committed rape upon her.

Learned counsel for the appellant submitted that since specific allegation has been levelled against the co-accused Harji Ram and no specific role has been allegedly assigned to the appellant in the commission of crime and investigation against the appellant has already been completed, no fruitful purpose would be served by keeping the appellant behind bars for an indefinite period.

Learned counsel for the appellant submitted that since co-accused namely Bhajan Lal has already been enlarged on bail by a coordinate Bench of this Court vide order dated 08.11.2023 in S.B. Criminal Appeal (SB) No.171/2023, the appellant who is in judicial custody since 11.12.2022 and trial of the case is likely to take sufficiently long time to conclude, thus, benefit of bail should also be granted to the accused-appellant.

Learned Public Prosecutor and learned counsel for the complainant have vehemently opposed the prayer for bail. However, they were not in a position to refute the fact that the above named co-accused has already been enlarged on bail by this Court.

Having regard to the entirety of facts and circumstances as available on record, upon a consideration of the arguments advanced at bar and after perusing the statements of victim 'M' recorded under various Sections of Cr.P.C., this Court prima facie finds that the prosecutrix in her statements recorded under Section 164 Cr.P.C. with the assistance of Special Educator Parul Vaishnav stated that only one person committed rape upon her. The prosecutrix during her statements recorded under Section 161 Cr.P.c. with the assistance of Special Educator Kesrimal Kuldeep, specifically stated that co-accused Harji Ram committed offence. This Court also prima facie finds that investigation against the appellant has already been completed. In the prima facie opinion of this Court, there is no reasonable ground to allow further incarceration of the appellant. Thus, this Court is of the prima facie opinion that the order rejecting the application for bail filed on behalf of the appellant, cannot be sustained and deserves to be set aside.

Consequently, the instant appeal is allowed. The impugned order dated 20.11.2023 passed by the learned Special Judge Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act Cases, Barmer is set aside. It is ordered that the accused-appellant Sunil Kumar S/o Sajan Ram, arrested in

connection with F.I.R. No.397/2022, registered at Police Station Dhorimana, District Barmer, shall be released on bail; provided he furnishes a personal bond of Rs. 1,00,000/- and two surety bonds of Rs. 50,000/- 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.