

Court No. - 78

Case :- CRIMINAL APPEAL No. - 5475 of 2023

Appellant :- Lalit

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Atul Kumar Singh, Manish Yadav

Counsel for Respondent :- G.A.

Hon'ble Raj Beer Singh, J.

**Order on Criminal Misc. Bail Application under Section 389(1)
Cr.P.C**

Heard learned counsel for the appellant, learned A.G.A. for the State and perused the record.

This application has been filed on behalf of the appellant for suspension of sentence and grant of bail during pendency of this appeal.

The appellant has been convicted by the Trial Court under Section 363, 366, 376 IPC and Section 3/4 POCSO Act and the maximum sentence awarded to the appellant is ten years R.I. along with fine.

It has been argued by learned counsel for the appellant that the trial court has not appreciated the evidence in correct perspective and that there is no credible evidence against appellant. As per ossification test report, the age of victim no.1 is 17 years and thus, by giving a margin of two years on the upper side, she has to be treated as a major girl. No other document regarding age of victim no.1 has been shown. As per prosecution version, the victim no.1 was enticed and taken away by appellant and victim no.2 was enticed and taken away by co-accused Rahul. Statement of victim no.1/P.W.5 was referred, wherein, she has stated that on 24.08.2016 while she along with her sister (victim No.2) has gone to Shilpgram, appellant and co-accused Rahul took them to

railway station for roaming and from there they went to Gwalior and there appellant has committed rape upon victim no.1 and that on next day, they were apprehended by the police. It was pointed out that in her statement under Section 164 Cr.P.C., victim no.1 has stated that appellant and co-accused Rahul have taken away victim no.1 and her sister but no bad/foul act was done against victim no.1. In her statement under Section 164 Cr.P.C., victim no.1 has not made any allegation of rape. Learned counsel submitted that during trial, victim no.1 has changed her version and made false allegation of rape in pressure of her family members. The victim no.1 has not sustained any injury. It is further submitted that during trial, the appellant was on bail and he has never misused the liberty of bail and that now he is languishing in jail since 18.03.2022 and thus, he has already undergone the detention of about one and half years. Referring to these facts, it was submitted that appellant may be granted bail.

Learned A.G.A. has opposed the prayer for suspension of sentence. Considering the submissions of learned counsel for the parties, the nature of accusations and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, the appellant is entitled to be released on bail during pendency of the appeal. Hence, the bail application is hereby **allowed**.

Let the appellant Lalit convicted and sentenced in Special Sessions Trial No.2274 of 2016 (State Vs. Lalit and another), Case Crime No.936 of 2016, under Section 363, 366, 376 IPC and Section 3/4 POCSO Act, P.S. Tajganj, District Agra, be released on bail on his furnishing a personal bond with two sureties (one should be of his family member) each in the like amount to the satisfaction of the court concerned.

On acceptance of bail bonds and personal bond, the court concerned shall transmit photostat copies thereof to this Court for being kept on the record.

Order on appeal

List on 20.12.2023.

Order Date :- 7.11.2023

Neeraj