

Court No. - 46

Case :- CRIMINAL APPEAL No. - 8420 of 2022

Appellant :- Hari Mohan

Respondent :- State of U.P. and Another

Counsel for Appellant :- Kamlesh Kumar Tiwari

Counsel for Respondent :- G.A., Harish Chandra Mishra

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

(Ref:- Criminal Misc. Bail Application)

This bail application is filed on behalf of the accused appellant Hari Mohan, who has been convicted in Special Sessions Trial No.41 of 2010 (State Vs. Hari Mohan), arising out of Case Crime No. 23 of 2010, under Section 376, 506 IPC & Section 3(2)5 SC/ST Act, Police Station Samthar, District Jhansi and the maximum sentence awarded to him is life imprisonment. The rest of the sentences are lesser sentences and all the sentences have been ordered to run concurrently.

As per the prosecution case, 17 years old victim had gone to pluck Pea from the field, when she was dragged by the accused, threatened her, and subjected to sexual assault.

Learned counsel for the appellant submits that the accused is a neighbour of the informant and has been falsely implicated in the present case on account of village enmity. It is also urged that there are contradictions in the version of the victim, which renders her testimony unreliable. It is also argued that the incident occurred in the year 2010 and therefore the provisions of Section 3(2)(v) of the SC/ST Act, amended in 2016, would not apply and the court below has erred in giving retrospective applicability to the amendment.

Learned AGA opposes the prayer made for grant of bail on the ground that the accused appellant will still have to serve the sentence of at least 10 years, in view of the evidence collected on the aspect of sexual assault, even if the appellant's argument was to be accepted and therefore the prayer for bail merits rejection.

We have heard learned counsel for the parties and have perused the material on record.

It is not in issue that the clothes worn by the victim were sent for forensic examination and the undergarments worn by the

victim are found to have semen as well as human blood. The incident has otherwise been seen by the PW-6, who is the Mausi of the victim. The victim herself has specifically deposed against the accused. All arguments advanced on behalf of appellant would require consideration at the time of hearing of the appeal, but in the facts of the case, we do not find it appropriate to accept the prayer made for grant of bail. Without further commenting upon the merits of the case the prayer for grant of bail is refused and bail application, accordingly, is rejected.

Office is directed to prepare the paper books and list the appeal for hearing in the month of March, 2024.

Liberty stands reserved to the appellant to revive his prayer for bail, in the event the appeal is not heard despite appellant's cooperation within a period of two years.

Order Date :- 8.8.2023

Anil