



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 5899 of 2024

Pravesh Singh Tomar

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Appellant(s) : Akshat Sinha, Sanyukta Singh, Sushil Shukla

Counsel for Respondent(s) : G.A., J Shubham

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE PRASHANT MISHRA-I, J.

Order on Criminal Misc. Bail Application.

Heard Sri Sushil Shukla, learned Senior Counsel assisted by Sri Akshat Sinha, learned counsel for the appellant, Sri J Shubham, learned counsel for the informant, learned A.G.A. for the State and perused the record.

This bail application has been moved on behalf of appellant-applicant, **Pravesh Singh Tomar**, praying to enlarge him on bail in **Special Sessions Trial No. 153 of 2020 (State vs. Pravesh Singh Tomar & Others)**, Case Crime No. 26 of 2020, under Sections 313, 323, 504, 506 I.P.C., and Section 6 POCSO Act, Police Station- Kotwali Fatehgarh, District- Farrukhabad, during the pendency of this appeal.

The prosecution version as noted in the impugned judgement and order of conviction unfolds from an FIR lodged by estranged wife of the appellant on 12.1.2020 at 4:12 PM, which was registered as Case Crime No. 26 of 2020 u/s 376-D, 313, 323, 504, 506 IPC r/w S. 3/4 POCSO Act against the appellant wherein it was alleged by her that her husband (i.e. the appellant) had been sexually assaulting his daughter aged about 16 years since long time and after she came to know, she had sent her daughter to Vanashthali Vidyapeeth, Jaipur for further studies. However, her husband even took her from aforesaid college and used to forcibly take her to hotels and used to sexually assault her along with his friends. The informant further alleged that on her protest, she and her daughter both were used to beaten and threatened by him therefore, her daughter had not disclosed about the incident. It was also alleged that her daughter had informed her that her father used to take her to various hotels in Dudhwa National Park and in Lucknow where he along with his friends used to sexually assault her, by which she became pregnant. Her abortion was carried out by a doctor in Avas Vikas Area where her father had pretended as her uncle. The informant further alleged that her husband used to flirt with friends of her daughter and on protest made by her daughter, she was threatened with life by him, which conversation was recorded by her. It was also alleged that entire story was known to her mother-in-law and to his second wife Bhawna who also had threatened

her daughter. Her daughter had also told the informant that her Dadi i.e. the mother of the appellant used to forcibly send her to him for sexual favour so as to calm him down. With these allegations, the informant had prayed for legal action against her husband and others.

Learned Senior Counsel for the appellant submits that the record reveals that on the FIR supra, investigation was commenced and on 12.1.2020 itself, the victim girl was sent to District Female Hospital by the police for her medico-legal examination. He submits that during her medico-legal examination, the victim girl had stated to the attending doctor that her father was sexually assaulting since she was in class 3rd and that she was ravished for the first time when she was 10-year-old and since then the episodes of such assault were continuing. Her father and his friends had also committed rape upon her in hotels. On 29.7.2019 in the night, they had committed rape for the last time. She had told her mother about the incidents nearly five years ago. On 1.10.2015, her father had subjected her to abortion in a private hospital. However, medico-legal report did not reveal any external or inter injury on the person of victim girl. She was referred to X-ray as well as ultrasound for uterus, which was conducted on 13.1.2020 and USG report was prepared on 17.1.2020, which revealed nothing abnormalities. The record further reveals that on 14.1.2020, the statement of the victim girl u/s 164 Cr.P.C. was recorded wherein apart from narrating her allegations as made and developed subsequently before the Investigating Officer of the case, she had also alleged that the appellant was talking with her friend namely Bhumika Jha, the conversation of which had been recorded by her

Learned Senior Counsel next submits that during trial of the appellant, the testimony of the victim girl was recorded as PW-1 and of the informant mother as PW-2. The testimony of the victim and of her mother was full of contradictions and improvements, which evidence was completely unreliable and was not inspiring confidence; during trial, the testimony of the Dr. Sudha Singh as PW-5 was recorded who allegedly had performed abortion of the victim girl; the prosecution had also examined Dr Krishna Bose as PW-6 who had prepared medicolegal report of the victim girl; after conclusion of prosecution evidence, the learned trial court had examined the appellant u/s 313 Cr.P.C. by asking lengthy and consolidated questions, which have prejudiced him in his defense and he could not effectively answer the incriminating circumstances appearing against him. However, by producing certified copies of various matrimonial litigations as pending or concluded between the appellant and his estranged wife i.e., the informant and her family members, the appellant had highlighted following facts for consideration of the learned trial court in his defense. The residence of the appellant and of his wife-informant is situated in the same mohalla with only few places apart. The marriage of the appellant with the informant was held on 7.3.2002 and it is only after a brief period of stay and due to excessive interference by her family members living nearby, the matrimonial differences between them erupted so much so that on 12.3.2003, she had left the matrimonial home and had begun living with her parents. The victim girl who is the first child out of wedlock was born on 17.4.2003 at natal home of the informant and she was being brought up by her mother and maternal family members there only. The appellant had no access to her as the relationship with his wife was estranged.

He further submits that the appellant on 2.9.2003 had filed a matrimonial Petition No. 398 of 2003 u/s 9 of HM Act in the court of Civil Judge (SD), Farrukhabad in which the informant-wife-respondent had appeared on 9.10.2003 in the aforesaid case and had also filed an application u/s 24 of HM Act seeking maintenance pendent-lit. It is relevant to submit that in this application, the informant-wife-respondent herself had admitted that she had left the matrimonial home of her husband since 12.3.2003 and was living with her parents where she had given birth to a girl child. Both families were living in same Mohalla there occurred an incident of assault on 22.10.2004 wherein the father and her two brothers of the informant-wife and the appellant and his father had committed marpeet against each other resultantly, two criminal cases of cross FIRs were registered on the complaint of both the parties against each other. FIR bearing Case Crime No. 770 of 2004 u/s 307, 34, 506 IPC, PS- Kotwali, District- Farrukhabad was lodged on 22.10.2004 by father of the informant-wife namely Rampal Singh Sengar wherein the appellant and his father Virendra Singh Tomar both were made accused. Likewise, another cross FIR bearing Case Crime No. 770A of 2004 u/s 454, 323, 504, 506 IPC, PS Kotwali, District Farrukhabad was lodged on 22.10.2004 by the appellant against father of his wife namely Rampal Singh and her two brothers namely Varun Pratap Singh and Vinay Singh Sengar. It is relevant to submit that the trial of both above said cases kept on pending for next 7 years and ultimately both the side compromised with each other therefore, both the cases ended into acquittal on the basis of provisions of Section 320 Cr.P.C . vide judgement and order dated 3.6.2011 passed by the Learned Addl. District and Sessions Judge, Court No. 3, Farrukhabad. While the compromise was being held between the parties i.e. between the appellant and family of his informant-wife, she had come to live for a brief period of two months only with the appellant at his residence and thereafter, she had again gone back to her natal home. While the trial of both the FIRs supra had commenced in the year 2004, the informant-wife-respondent had on 26.4.2006 instituted a Maintenance Case No. 96/12 of 2006 u/s 125 Cr.P.C. against her husband i.e. the appellant in the court of JM City/Civil Judge (JD), Farrukhabad wherein she had sought maintenance for her and for her child i.e. the victim girl. It may not be out of place to point out herein itself that in the above said 125 Cr.P.C. application, she had herself alleged that she was driven out of matrimonial home since 12.3.2003 and was living with her parents. On 10.8.2007, vide his judgment and order, the Learned ACJM, Court No. 8 had finally decided the above said application u/s 125 Cr.P.C. filed by the informant-wife whereby and whereunder the appellant was directed to pay maintenance to his wife and also to his daughter. Meanwhile, on 25.11.2008, the Learned Ist Addl. Civil Judge (SD) before whom the petition u/s 9 of the HM Act filed by the appellant had decreed the said petition in his favour thereby directing the respondent-wife to join matrimony with him otherwise the marriage was directed to be annulled; against the above said judgment and order dated 25.11.2008 supra, the informant-wife filed an appeal before the court of Learned District Judge on 20.12.2008, which was pending adjudication. Finally, on 4.1.2020, the appellant had filed a Divorce Petition No. 11 of 2020 in the court of Principal Judge, Family Court, Farrukhabad against his wife-respondent. It is relevant to submit that even though the informant-wife was living separately at her natal home with the victim girl and also another male child born to her yet all expenses towards good education of the victim girl were being borne by the appellant himself and he had admitted her

into a very prestigious English Medium co-education School of District Farrukhabad namely St. Anthony. While the victim girl was prosecuting her 10th class studies, one day in order to check whether or not she was using mobile phone in the school, the appellant had checked her school bag and found few loose pages wherein and whereby she was communicating with her some school boy friend. In other words, in absence of mobile, she was writing on pages and communicating with her boyfriend in the class and in turn, the said boy was responding through such writings to her. A reading of such communication between them also revealed that she was being seduced by some older person to whom she had addressed as Chacha or Mama. And that she was also communicating about safe sex with her boyfriend.

He finally submitted that it is relevant to submit that above said letters as written by the victim girl were produced before the trial court, which were admitted to have been written by her during her testimony before the Learned trial court however the true import of the contents of those letters were clearly ignored by the Learned trial court while appreciating the prosecution evidence. The above said revelations through the letters supra written by the victim girl were very shocking to the appellant and it was apparent that her mother i.e. the informant was not taking adequate care of her and was not conscious of her growing up child resultantly he had fought with the informant-wife over the issue and later, after completion of 10th class, the victim-girl was taken by the appellant to Jaipur and she was got admitted there in another prestigious girl college namely Vanashthali Vidyapeeth, which is a boarding school. At the time of admission, both the appellant and the informant-wife were present and their names were entered as guardians in the school records. While the victim girl was studying in the Vanashthali Vidyapeeth at Jaipur, the school authorities had found and recovered mobile phone her possession, which was completely banned in the school. After it was communicated to the appellant as her father, he made enquiries and discovered that the said mobile phone was delivered to her through some boy from Farrukhabad. On that, the appellant had warned her and had even gone to extent of telling her that in case if she is found to use mobile phone again then he would get her back from school. It is relevant to submit that while bringing or leaving her at school, the appellant used to take her by car and had often visited several famous temples on the way such as Bala Ji Maharaj and had also stayed in several hotels with his daughter and also with many other family members and friends. The appellant along with victim girl and with her mother i.e. the informant and other children along with family of several friends had visited tourist spots such as Dudhwa National Park and Pilibhit Tiger Reserve during vacation. The appellant however had never taken his daughter alone to any such places nor with any friend as is being alleged in the instant case. The appellant has with him several photos of such tourist spot visits made in company of friends and their families, the copies of which were produced by the appellant in his defense before the Learned trial court and which were never denied or disputed by the prosecution. It is also relevant to submit that the appellant is employed as Lekhpal and on 21.7.2018 had gone to Lucknow with his friend Manoj K Shukla and had stayed with him in hotel Levana only for one day and night as the said friend was going to purchase some agricultural land in adjoining area of Lucknow and the appellant being Lekhpal was taken along for making revenue enquiries etc. of such land sought to be purchased. This fact was very well in knowledge of the

informant-wife and also other family members. It is only after the appellant had finally filed divorced petition on 4.1.2020 against the informant-wife wherein he had made wild allegations against her character on that she got infuriated and it appears that under some ill advise she had made wild, reckless and completely absurd allegations by lodging FIR on 12.1.2020 against the appellant and had later tutored the victim girl (who was already aggrieved against her father i.e. appellant as he had caught her communication pages and also had rebuked her over possession of mobile in school) to support false accusations made in the FIR before the police and also before the Magistrate during her recording of statement. The victim girl had been tutored and influenced by her mother so much so that she had implicated friends and advocate of the appellant who have stood with him during matrimonial disputes. It is submitted that the appellant is victim of ill design made by his wicked and estranged wife-informant who is all out to destroy him not only socially but economically also by making him rot inside the jail on such wild and wicked accusation of rape upon a daughter. That mindful of the golden statement/principle of law governing appreciation of evidence of prosecutrix wherein it has been held that the solitary evidence of the prosecutrix is sufficient for finding guilt of the accused provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and of sterling quality, the appellant begs to submits before this Hon'ble Court that the material discrepancies, serious contradictions on material particulars as well as prevaricating stand emerging from the threadbare consideration of the evidence of the prosecutrix, it is more than evident that her sole testimony does not inspire confidence and no implicit reliance can be placed thereon, and in such a case, it will neither be prudent nor safe to find the appellant guilty. Apart therefrom, the victim-prosecutrix does not even get any corroboration/assurances from other prosecution evidence available on record and therefore, the appellant, in the instant case, has fair chance of acquittal and thus this Hon'ble Court may kindly consider his release on bail during pendency of his accompanying criminal appeal. The appellant is a government servant and his right to life can be affected in case his conviction is not stayed. This appeal is of the year 2024 only. It is not likely to be heard in near future. Appellant is on bail during trial and is in jail after conviction in this case.

Learned A.G.A. has vehemently opposed the prayer for bail of applicant-appellant but could not dispute the contentions of the learned counsel for the appellant.

After hearing the rival submissions and considering the fact that there are more than two hundred criminal appeals being listed before this court per day and it is not humanly possible to decide all on merit. There is remote possibility of hearing of this appeal in near future hence prayer for grant of bail to the applicant is allowed.

Let the applicant-appellant convicted and sentenced in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned.

The conviction and sentence awarded to applicant-appellant shall also remain suspended during the pendency of this appeal, since he is a

Government servant and his right to earn his livelihood for survival cannot be curtailed because of implication in this case.

Applicant-appellant shall not transfer, sell, alienate or create any charge on the immovable property in his name, while on bail save with leave of this court.

The appellant shall inform the change of address, if any, within ten days, failing which the State shall be at liberty to request for cancellation of his bail.

As soon as personal and surety bonds are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by the concerned court to be kept on record.

The appellant-applicant is directed to deposit 50% of fine within a period of one month from the date of his release from jail. Remaining 50% of fine shall remain stayed till the pendency of criminal appeal.

It is made clear that in case, the fine is not deposited within the time as specified above, the same shall be recovered in accordance with law.

Order on Criminal Appeal

Lower court record has been received.

Office is directed to get the paper book prepared within six weeks.

List this appeal for hearing in due course.

(Prashant Mishra-I,J.) (Siddharth,J.)

December 12, 2025

Saurabh