

**Court No. - 82**

**Case :-** CRIMINAL APPEAL No. - 11765 of 2024

**Appellant :-** Dr Shahnawaj

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Mukul Yadav,Rajesh Yadav

**Counsel for Respondent :-** G.A.

with

**Case :-** CRIMINAL APPEAL No. - 10720 of 2024

**Appellant :-** Smt Mehnaz

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Mukul Yadav,Rajesh Yadav

**Counsel for Respondent :-** G.A.,Pankaj Kumar Singh

with

**Case :-** CRIMINAL APPEAL No. - 10737 of 2024

**Appellant :-** Faizan

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Mukul Yadav,Rajesh Yadav

**Counsel for Respondent :-** G.A.,Pankaj Kumar Singh

**Hon'ble Nalin Kumar Srivastava,J.**

1. Heard learned counsel for the appellants, learned counsel for the informant, learned A.G.A. for the State and perused the material available on record.

2. These criminal appeals under Section 14-A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellants - **Dr. Shahnawaj, Smt Mehnaz and Faizan** with the prayer to set aside the bail rejection orders dated 24.10.2024, 11.10.2024 and 11.10.2024 passed by the learned Special Judge (SC/ST Act), Moradabad in Case Crime No. 357 of 2024 under Sections 61 (2), 64, 351 (2), 127 (2) BNS & Section 3(1)r, 3 (1)s, 3(2)v SC/ST Act, Police Station - Tahakurdwara, District- Moradabad.

3. As per prosecution case, in the night of 17.8.2024 in criminal conspiracy with co-accused Mehnaz and Junaid the present accused appellant committed rape to the victim who was working as a nurse in the AVM Hospital owned by the present accused appellant and they also hurled abuses by caste related remarks. She was further detained throughout the night by the accused appellant.

4. It is submitted by the learned counsel for the appellants that the appellants are innocent and have been falsely implicated in this case. They have not committed the present offence. Alleged offences are not attracted against them. Essential ingredients to establish an offence under SC/ST Act are also missing in this case. It is further submitted that the whole prosecution story is false and concocted. It is also submitted that the CDR report and CCTV footage which has been collected by the I.O. also does not corroborate the prosecution version in material terms. It is further submitted that the pathology and lab reports do not support the prosecution case. It is also submitted that the appellant had absolutely no motive to commit the crime and no other previous incident has been stated by the victim in her statement under Section 180 and 183 BNSS. The trial Court while passing the impugned order did not take into account the facts and evidence available on record in right perspective and erred in passing the same. Appellants are in jail since 19.8.2024 having no criminal history to their credit. It is lastly submitted that the impugned order rejecting the bail applications of the appellants suffers from infirmity and illegality warranting interference by this Court.

5. On the other hand, learned AGA and learned counsel for the informant opposing the prayer for bail submitted that the appellants committed the present offence having knowledge that the victim belonged to scheduled caste community. There is no infirmity or illegality in the impugned orders dated 24.10.2024, 11.10.2024 and 11.10.2024. It is further submitted that there is no motive for false implication on the part of the present appellant. It is true that the victim of this case is working as a nurse in the hospital of the appellant but the CCTV footage contains several incriminating views. It is further submitted that it was quite natural and probable for the victim to hesitate of this case to come forward to disclose the shameful incident which might cause a dent upon her image and decency and this could be a genuine reason for causing delay in lodging the FIR. It is a case of rape committed by a doctor in his nursing home to her nurse.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

7. Having heard learned counsel for parties and having perused the record, insofar as the appellant Dr Shahnawaj is concerned, he is the principal offender, though he is in jail since 19.8.224 but no good ground is made out to enlarge him on bail at this stage. Accordingly, the impugned order rejecting the bail application of

the appellant **Dr Shahnawaj** is affirmed and the Criminal Appeal No. 11765 of 2024 filed by him is **dismissed**.

8. Insofar as accused appellants- Smt Mehnaz and Faizan are concerned, having regard to the facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, the Court is of the opinion that the appellants have made out a case for bail. The trial Court erred in rejecting the bail application. The impugned order suffers from infirmity and illegality and the same is liable to be set-aside and the appeal is to be allowed.

9. Accordingly, Cr. Appeal No. 10720 of 2024 and Criminal Appeal No. 10737 of 2024 of the appellants **Smt Mehnaz and Faizan** are **allowed** and the impugned orders rejecting the bail applications of the appellants are hereby, **set-aside**.

10. Let the appellants **Smt Mehnaz** and **Faizan** involved in the aforesaid crime be released on bail on furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The appellants will not tamper with the evidence during the trial.

(ii) The appellants will not pressurize/ intimidate the prosecution witness.

(iii) The appellants will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

(v) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

11. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

**Order Date :- 17.2.2025//Fhd**