

Court No. - 88

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Case :- CRIMINAL APPEAL No. - 1809 of 2021

Appellant :- Devesh

Respondent :- State of U.P.

Counsel for Appellant :- Yogendra Kumar, Sher Singh

Counsel for Respondent :- G.A.

Hon'ble Anil Kumar Ojha, J.

Order on Criminal Misc. Bail Application No. 1 of 2021.

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

Despite service of notice none present on behalf of informant/complainant.

Submission of learned counsel for the appellant is that the appellant has been wrongly convicted; trial court has misinterpreted the evidence available on record. There is unexplained delay of one month and twenty four days in the lodgment of F.I.R. The evidence of eye witnesses is not admissible in the eyes of law. Victim was major at the time of incident. Appellant is innocent and has not committed the alleged offence. Further submitted that conviction of appellant is not justified biologically on the basis of simply matching the DNA report of appellant and victim's son Ketan because the victim and the appellants are siblings. Victim's father Bhola Nath and father of appellant Har Prasad are real brothers having same father Janki Prasad. Thus, all the three persons i.e. victim, her son and appellant are descendants of one ancestor i.e. Janki Prasad and having the same family tree, they are having same DNA matching, so in this case, conviction of appellant Devesh simply on matching of DNA is not justified. Appellant is in jail since 02.05.2018.

Per contra, learned A.G.A. vehemently opposed the above submission of learned counsel for the appellant and contended that on account of alleged rape, victim became pregnant and gave birth to a child Ketan. DNA of Ketan and appellant Devesh also matched. The offence committed by appellant is heinous and his bail application should be rejected.

Perusal of the record reveals that the victim in her statement before the court has supported the prosecution story. She stated that on account of alleged rape she became pregnant, she gave birth to a child named Ketan. The father of child Ketan is

appellant Devesh. DNA of the child Ketan matched with appellant Devesh. It is admitted position that appellant and victim are siblings (Cousin brother and sister). Such offence demolishes the social fabric.

Considering the facts and circumstances of the case, particularly the fact that the victim has supported the prosecution version, I am of the firm opinion that appellant is not entitled to be enlarged on bail.

Accordingly, the bail application of the appellant, is rejected.

List in due course.

Order Date :- 10.11.2021

VPS