

Court No. - 74

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Case :- CRIMINAL APPEAL No. - 1219 of 2021

Appellant :- Arif

Respondent :- State Of U.P.And Another

Counsel for Appellant :- Ashok Kumar Singh Bais

Counsel for Respondent :- G.A.

Hon'ble Pradeep Kumar Srivastava,J.

Heard learned counsel for the appellant and learned AGA for the State and perused the record.

Notice was sent to respondent no.2 and the Chief Judicial Magistrate, concerned vide letter dated 12.04.2021 has submitted that the notice has been personally served on respondent no.2.

None is present for the respondent no.2.

This appeal has been filed by appellant **Arif** against the impugned order dated 17.02.2021 passed by learned Special Judge, SC/ST Act, Saharanpur passed in Bail Application No.323 of 2021, arising out of Case Crime No. 02 of 2021, under Sections 363, 366, 506 I.P.C. and Section 3/5 of U.P. Prohibition of Unlawful Conversion of Religion Ordinance 2020 and 3(2)(5) of SC/ST Act, P.S. Janakpuri, District Saharanpur by which bail plea of appellant has been rejected. Aggrieved by the rejection order this appeal has been filed.

The FIR version is that the incident took place on 4.1.2021 in respect of which on the same day FIR was lodged by the informant Vishal against the accused appellant with the allegation that the daughter of the informant aged about 17 years had gone to Sewing Center and she did not return till the evening. A rigorous search was made by the family members and then it came to the knowledge that the appellant accused has enticed away and has kidnapped her.

Submission of learned counsel for the appellant is that there is evidence on record to show that the victim in the case was not minor and was aged about 19 years as per medical report, which is annexed at page 34. Further submission is that there is no allegation of POCSO Act. It has been submitted that on the same day the victim came back and her statement was recorded by the I.O. under Section 161 Cr.P.C., in which she has stated that instead of going to Sewing Centre at the relevant time she went with accused appellant who wanted to get her converted

but she did not want to convert herself. For this, the appellant has given promise of marriage and she was influenced by this allurements and went with him, when she was coming back she was caught by the police and the statement was recorded. Later on her statement under Section 164 Cr.P.C. was also recorded by the Magistrate in which she has stated that the appellant accused was a vegetable vendor and used to run his shop on *thela*. On the relevant time he met her on the way and asked her mobile number and pressurized her to talk with him and given threatening that otherwise he will kill her. He also said that convert yourself and marry with him. One day before the date of incident he rang her on mobile phone and proposed that he will take her for trip and, therefore, she went with him instead of going to Sewing Centre. He took her to Dehradun Chawk stayed in the house of his relatives where he and other persons were talking about converting her and they asked her to convert for marriage but she came back. Further submission is that there is no allegation of sexual abuse not there was any threat or influence for her conversion except that the accused appellant was asking her to convert. Further submission is that mere asking for conversion does not come within the purview of offence defines under Section 3 of the U.P. Prohibition of Unlawful Conversion of Religion Act, 2021.

Section 3 of the Act reads as follows:-

"3. Prohibition of conversion from one religion to another religion by misrepresentation, force, fraud, undue influence, coercion, allurements:- (1) *No person shall convert or attempt to convert, either directly or otherwise, any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurements or by any fraudulent means. No person shall abet, convince or conspire such conversion.*

Explanation.- For the purposes of this sub-section conversion by solemnization of marriage or relationship in the nature of marriage on account of factors enumerated in this sub-section shall be deemed included.

(2) If any person re-converts to his immediate previous religion, the same shall not be deemed to be a conversion under this Act.

Explanation.- For the purpose of this sub-section immediate previous religion means the religion in which the person had faith, belief or was practiced by the person voluntarily and freely."

The submission of learned counsel for the appellant is that it is clear from the above definition that no act has been done by the appellant towards the conversion of the victim and during the period she was with him, there is no allegation made by the victim that any kind of sexual abuse was committed on her.

Therefore, it has been submitted that the learned Special Judge did not consider the material aspect of the case and rejected the bail application. It has also been submitted that a reference has also been taken of the affidavit given by the informant, which is annexed at page 40 and has been addressed to learned Additional District Judge, IInd, Saharanpur and in that affidavit there is stipulation that parties have entered into a settlement and the informant has no objection for the bail of the appellant. Further submission is that in such circumstance, the rejection of the bail application is illegal and the impugned order is liable to be set aside. Further submission is that appellant has no criminal history and there is also no possibility of his either fleeing away from the judicial process or tampering with the witnesses.

Learned AGA has vehemently opposed the prayer and submitted that the girl was taken away by the accused appellant and he was asking her for conversion so that they can marry. He has also submitted that there is no case for sexual abused of the victim.

Considered the submissions of both the sides and taking into consideration the entire facts and circumstances of the case, the statement of the victim given to the I.O. and given to the Magistrate under Section 164 Cr.P.C., the affidavit filed by the informant, that no sexual abuse was committed on the victim, and no act was committed towards the conversion of the victim, the victim has been found to be aged about 19 years in the medical report, I find that the learned Special Judge has illegally rejected the bail application. The accused appellant is in jail from the last more than eight months, as such, I find apparent illegality in the impugned order and the same is liable to be set aside.

In the result, appeal is **allowed**. Impugned order dated 17.02.2021 passed by learned Special Judge, SC/ST Act, Saharanpur, is set aside.

Let appellant-applicant **Arif** be released on bail in Bail Application No. 323 of 2021, arising out of Case Crime No. 02 of 2021, under Sections 363, 366, 506 I.P.C. and Section 3/5 of U.P. Prohibition of Unlawful Conversion of Religion Ordinance 2020 and 3(2)(5) of SC/ST Act, P.S. Janakpuri, District Saharanpur on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions:-

(i) The applicant-appellant will co-operate with the trial and remain present personally on each and every date fixed for

framing of charge, recording of evidence as well as recording of statement under Section 313 Cr.P.C. or through counsel on other dates and in case of absence without sufficient cause, it will be deemed that he is abusing the liberty of bail enabling the court concerned to take necessary action in accordance with the provisions of Section 82 Cr.P.C. or Sections 174A and 229A I.P.C.

(ii) The applicant-appellant will not tamper with the prosecution evidence and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant-appellant will not indulge in any unlawful activities.

The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

Order Date :- 12.8.2021

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