

(2005) 08 AHC CK 0170

Allahabad High Court

Case No: Criminal Misc. Bail Application No. 9180 of 2005

Kanhai Kasyap

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 9, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 328, 366, 376
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)

Hon'ble Judges: Ravindra Singh, J

Bench: Single Bench

Advocate: U.C. Misra and S.K. Gupta, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Ravindra Singh, J.

Heard Sri U.C. Misra and Sri Sanjeev Kumar Singh tearned counsel for the applicant and learned A.G.A.

2. This application is filed by the applicant with a prayer that he may be released on bail in case crime No. 466 of 2004, u/s 328, 366, 376 I.P.C. and Sections 3(1)(xii) S.C./S.T. (P.A.) Act, P.S. Binawar, district Budaun.

3. From the perusal of the record it reveals that in the present case the F.I.R. was lodged by Smt. Manju against the applicant and the three other co-accuse persons on 29.10.2004 at 6.14 p.m. In respect of the alleged incident occurred on 6.9.2004 at about 12 O" clock in the noon.

4. The prosecution story in brief is thai the prosecutrix Was going to Bhamaura on 9.8.2004 to provide the medicines to her ailing son Harish. When she reached near the turning of Gautia at about 12 O" clock noon the applicant and co-accused Pappu

and Nanhe met her and they inquired from the prosecutrix about her departure. She disclosed that she was going to take the medicine Bhamora to her son the accused persons also joined the company of the prosecutrix and some intoxicated material was put in her mouth by them by force. Consequently, she became unconscious. Thereafter, she was taken by above mentioned accused persons to village Saidpur where she was kept in the house of one Ratiram. When she became conscious she was raped by the applicant and co-accused Rati Ram by force. The wife of Rati Ram was keeping watch over the prosecutrix and thereafter, she was sold by the above mentioned co-accused persons in Rs. 8000/-. The prosecutrix any how escaped from clutches of those persons and came to her Sasural and lodged the F.I.R. the statement of the prosecutrix was recorded u/s 161 Cr. P. C. in which she disclosed the same fact, but she disclosed the name of Shyam Singh Who has purchased her in Rs. 8000/- and she was also raped by him. The state met of the witness Satya Pal was also recorded in which he stated that he had stated that the prosecutrix was enticed away by the applicant and other co-accused persons from the village.

5. It is contended that the prosecutrix is a marrid lady, No injury was seen on her person and no spermatozoa was found in vaginal smear. The present F.I.R. is false and fabricated. It is further contended that co-accused Pappu and Nanhey were released on bail by this court on 20.5.5.2005.

6. It is opposed by the learned A.G.A by submitting |that the allegation of rape is against the applicant and co-accused Rati Ram. It has not against the Nanhey who has been released on ball by this court and the prosecutrix was soled by the applicant and co-accused Shyam Singh. They had committed rape with the prosecutrix without her consent and after committing rape she was sold by the applicant and other co-accused to Shyam Singh.

7. Considering the facts and circumstances of the case and submissions made by the learned counsel for the applicant, learned A.G.A. and and without expressing any opinion on the merits of the case, I find that it is not a fit case for bail at this stage.

8. Accordingly, the ball application is rejected at this stage.