

(2011) 12 AHC CK 0300

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 19930 of 2010 in Criminal Appeal No. - 480 of 2010

Bablu @ Arvind Kumar Verma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Dec. 12, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 389
- Penal Code, 1860 (IPC) - Section 376(G)

Hon'ble Judges: Virendra Kumar Dixit, J; Abdul Mateen, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. As aforesaid applications moved u/s 389 Cr.P.C. for bail in pending appeals arise out of one and same sessions trial, as such, they are being taken up together and decided by this common order.

2. Heard Learned Counsel for applicants-appellants and the learned Additional Government Advocate.

3. Appellants-Bablu alias Arvind Kumar Verma and Vijay Kumar Verma are convicts of Sessions Trial No. 452 of 2005. They have been convicted u/s 376 (G) IPC and sentenced for maximum term of life imprisonment with fine stipulation vide judgment and order dated 06.02.2010 passed by learned Additional Sessions Judge/Fast Track Court No. 28, Barabanki.

4. We have gone through judgment and record of lower court.

5. It is a case where as per FIR on 08.12.2004 at about 6.30 p.m. prosecutrix while easing herself along with her Nanad was subjected to rape by appellants; FIR of the incident was lodged on 12.12.2004 at 10.30 a.m.; prosecutrix is a married lady; she was medically examined on 13.12.2004 wherein nothing abnormal was detected by

the Doctor; hymen of the prosecutrix was found to be torn and her vagina admitted two fingers.

6. Argument advanced by the Learned Counsel for the appellants is that appellants have been convicted for maximum term of life imprisonment u/s 376 (G); they had been falsely implicated just to extract money from the State as admitted by husband of the prosecutrix examined as PW-2 who has stated that after the incident he had received Rs.25,000/- from the Harijan Welfare Department; merely on the basis of statement of the prosecutrix examined as PW-1 conviction of the appellants could not have been made without it being supported by any other evidence; though it was alleged that prosecutrix was accompanied by her Nanad, aged about 15 years, who was caught hold by one of the accused outside field, but nothing was done with her, as such, story of the prosecution seems to be improbable and though it was alleged that the prosecutrix was dragged into a field, but no injury had been found on her body. It is stated that the appellants, who are in jail since 06.02.2010, were on bail during course of trial and they did not misuse liberty of bail granted to them. It is also stated that appeals are of the year 2010 and there is no likelihood of the same being heard and decided in near future.

7. After considering overall aspects of the matter, we find it a fit case for bail.

8. Let appellants-Bablu alias Arvind Kumar Verma and Vijay Kumar Verma, convicts of aforesaid sessions trial, be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Chief Judicial Magistrate concerned.

9. Realization of half of fine is stayed and remaining half shall be deposited by the appellants within one month from the date of their release on bail.

10. Chief Judicial Magistrate concerned is directed to transmit to this Court photocopies of bonds and sureties filed by the appellants to be preserved in the record maintained here.