

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-456-2022 (O&M)
Date of decision: 17.05.2022

Happy

... Appellant

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vikram Rana, Advocate
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this appeal is for setting aside the order dated 12.01.2021 passed by the Additional Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Kurukshetra, vide which the application filed by the appellant for grant of regular bail was dismissed.

Learned counsel for the appellant relies upon the order dated 18.04.2022 passed in CRA-S-272-2022, vide which co-accused Bhopal Singh has been granted the concession of regular bail, by passing the following order:-

“Learned counsel for the appellant, at the very outset, has referred to an order dated 19.04.2021 passed in CRA-S-1525-2020, CRA-S-1-2021, CRA-S-23-2021, CRA-S-157-2021, CRA-S-50-2021 &

CRA-S-51-2021, vide which appeals filed by the appellant along with five other accused namely Rahul, Ram Kumar, Narender Kumar, Ashok Kumar and Happy were decided and prayer for grant of regular bail to appellant Bhopal Singh, Ashok Kumar and Happy was declined.

Brief facts of the case are that FIR was registered on a complaint given by Jarnail Singh that on 05.10.2020, the accused persons have kidnapped his son Sagar, as he belongs to Scheduled Castes category. It is stated in the FIR that on that day, Sagar along with his nephew Lovekesh had gone to the house of Ajay on account of his birthday, where several other guests were also invited. When Sagar and Lovekesh were returning back, accused persons intercepted them and stopped their motorcycle and gave beatings to them and also caused damage to the motorcycle. They tried to abduct Sagar and Lovekesh, however, Lovekesh escaped from the clutches of accused persons and took Sagar along with them. FIR was registered under Section 3(2)(v) of SC& ST Act read with Sections 120-B, 201, 302, 365 IPC, however, during the investigation, Sections 201 & 302 IPC were deleted and Section 306 IPC was added.

Learned counsel submits that since during the investigation, the police deleted Sections 302 & 201 IPC and added Section 306 IPC, as there was some evidence with regard to committing of suicide by Sagar, therefore, it will be a matter of trial whether the

case set up by the prosecution is proved against the appellant or not, as he was not named in the FIR at the first instance. Learned counsel has referred to the order dated 03.02.2022 passed by the Hon'ble Supreme Court in SLP (Crl.) No.6098/2021, in which co-accused Ashok Kumar challenged the aforesaid order dated 19.04.2021. The order passed by the Hon'ble Supreme Court reads as under: -

“The Court is convened through Video Conferencing.

Applications seeking exemption from filing certified copy of the impugned order as also seeking exemption from filing official translation of Annexures are allowed.

This Court issued notice in this matter on 31-8-2021.

Heard learned counsel appearing for the petitioner, learned counsel appearing for the State of Haryana and carefully perused the material available on record.

Taking into consideration the fact that the charge sheet has been filed in the matter and also the fact that the petitioner is reported to be in jail since 23-10-2020 and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant bail to the petitioner.

The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the

concerned Trial Court shall deem fit and find appropriate to impose upon him.

With the above observations, the Special Leave Petition stands disposed of.”

Learned counsel further submits that co-accused Ashok Kumar was named in the FIR and there is direct allegation against him, whereas name of the appellant surfaced during the investigation in the disclosure statement of co-accused, therefore, his case is on better footings.

Learned State counsel has filed the custody certificate dated 17.04.2022 in the Court and has not disputed the factual position. It is also not disputed that challan was presented under Section 306 IPC, after deleting Sections 302 & 201 IPC. As per the custody certificate, the appellant is in custody for the last 01 year, 05 months and 24 days; he is not involved in any other case and the case is still at the stage of framing of charge, therefore, it will take some time in conclusion of the trial...”

For the sake of brevity, facts are not reproduced again.

Learned counsel for the appellant submits that the appellant is in custody for the last 01 year, 07 months and 05 days; charges have been framed and till date, no prosecution witness has been examined.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the aforesaid facts and circumstances of the case, this appeal is allowed. The impugned order dated

12.01.2021 passed by the Additional Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Kurukshetra is set aside and the appellant is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

[ARVIND SINGH SANGWAN]
JUDGE

17.05.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No