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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2639-2022(O&M)

Date of Decision: December 21, 2022

Amar Singh

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Aditya Sanghi, Advocate
for the appellant.
Mr.B.S.Virk, DAG, Haryana.

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RAJESH BHARDWAJ, J.(ORAL)

CRM-48233-2022

Application for exemption is allowed, as prayed for.

Main case

Instant appeal has been filed by the appellant impugning the order dated 02.12.2022 passed by learned Additional Sessions Judge, Fast Track Special Court, Sirsa, dismissing the petition filed by the appellant for grant of regular bail in case FIR No.32, dated 07.07.2021, under Sections 376(2)(n), 376(2)(F), 406 IPC and Sections 3(1)(w)(i), 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, IPC, registered at Police Station Women Sirsa.

Adumbrated facts of the case are that complaint was lodged by the prosecutrix on the basis of allegations that she was 40 years of age at the time of occurrence and had a dispute with her husband and on account of the same, for the last 10-12 years, she was living separately from her husband in Flat No.309/10, HUDA, Sector 19, Sirsa. It was further alleged that from 2017 onwards, her *nanand* Kulwant Kaur and her son, namely, Amar Singh,

i.e. the present appellant, started living with her. It was alleged that one day in the night when she was asleep, appellant Amar Singh alias Nikka entered into her room and established physical relations with her without her consent and when she warned him to take legal action, he apologized for the same. However, thereafter, he began establishing physical relations with her regularly. She purchased car, motorcycle, A.C., however, Amar Singh had taken money in cash from her and brought all the articles on loan in his name and never paid the loan amount and due to this, again dispute arose between both of them. She further alleged that her husband had already died. She further alleged that on the pretext of marriage, Amar Singh established physical relations with her and duped her with an amount of Rs.2.70 lakhs. The request was made to take legal action against the culprit.

On the basis of complaint, formal FIR was lodged and investigation was commenced. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. and she was medico- legally examined. The appellant was arrested on 09.08.2021. Challan was presented, charges were framed and the trial Court commenced with recording of the evidence. Appellant approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Sirsa, praying for grant of bail, however, after hearing both the sides, the same was declined vide order dated 02.12.2022. Appellant had earlier approached this Court by way of filing CRM-M-48626-2021, however, the same was dismissed as withdrawn vide order, dated 11.07.2022. Thereafter, the appellant has approached this Court by way of this appeal against order dated 02.12.2022 and has prayed for grant of bail.

appellant and the prosecutrix both are of the age of majority and are close relatives. He submits that the appellant has been falsely implicated by the prosecutrix in this case. It is further submitted that by no stretch of imagination it can be inferred that the appellant could have extended the promise of marriage, as alleged by the prosecutrix. He submits that in the facts and circumstances, at the most relationship between the appellant and the prosecutrix was consensual and thus, offence under Section 376 IPC would not be attracted in this case, as per the settled proposition of law. To buttress his arguments, he has submitted that now the learned trial Court has examined the prosecutrix as PW2 and she emphatically resiled from her statement and deposed before the trial Court that neither the appellant committed any rape with her nor established any physical relations with her without her consent. He has submitted that due to the same, she was declared hostile by the trial Court on the request of learned public prosecutor. It is submitted that the appellant has no criminal antecedents. He fairly submits that though the appellant faced prosecution in one more case, however, he has been acquitted in the same. He submits that in the overall facts and circumstances, once the prosecutrix, who is of the age of majority, has already been declared hostile, further incarceration of the appellant is not warranted and he deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the appellant. He has submitted that there are specific allegations against the appellant. He submits that there are allegations pertaining to blackmailing of the prosecutrix by the appellant and he has allegedly duped her for Rs.2.70 lakhs. However, he has candidly acknowledged that the prosecutrix is of the age of majority and she has been

examined and has not supported the case of the prosecution. He further submits that out of 22 prosecution witnesses, five have already been examined including the prosecutrix.

Heard.

Evidently, the prosecutrix and the appellant both are of the age of majority and they are close relatives as well. As per case of the prosecution, once the prosecutrix started living separately from her husband, appellant and the prosecutrix were living together voluntarily. The prosecutrix has been examined by the trial Court and she has not supported the case of the prosecution. A perusal of deposition of the prosecutrix before the trial Court would show that she has specifically deposed that neither any rape was committed with her nor the appellant established physical relations with her without her consent. However, this Court would refrain itself from commenting anything on merits of the case. In the overall facts and circumstances of the case, this Court finds that counsel for the appellant succeeds in making out a case for grant of bail to the appellant.

In the totality of facts and circumstances and without making any observation on merits, present appeal is allowed and order dated 02.12.2022 is set aside. Appellant be enlarged on bail on his furnishing bail/surety bonds subject to the satisfaction of trial Court/Duty Magistrate concerned.

Nothing stated herein shall be treated as an expression of opinion on the merits of the case.

December 21, 2022
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(RAJESH BHARDWAJ)
JUDGE