

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRA-S-368-2023 (O&M)
Date of Decision: 24.03.2023**

Sanjay Kumar @ Sanjeev Kumar**...Appellant**

Versus

State of Haryana**...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL****Present:-** Mr. Pranshul Dhull, Advocate for the appellant

Ms. Priyanka Sadar, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The appellant, through instant appeal is seeking setting aside of order dated 21.02.2022 whereby Additional Sessions Judge, Rewari has dismissed regular bail application of the appellant in FIR No.272 dated 03.06.2021 registered under Sections 323, 354-A, 376(2)(n), 450 & 506 of Indian Penal Code, 1860 (for short 'IPC') and Section 3(1)(w) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') registered at Police Station Model Town, Rewari.

2. The case of the prosecution is that complainant lodged a complaint on 03.06.2021 alleging that she is 21 years old and on 01.06.2021 at 3:00 PM, she was bathing in bathroom. She did not lock the door and suddenly, Sanjay-appellant entered the bathroom and

started touching her body. He tried to put his private part in her private part. She started crying. Her brother, after hearing her cries, arrived there and slapped Sanjay. He (Sanjay) on 27&28.05.2021 had also raped her in the room situated at upper floor.

3. Learned counsel for the appellant, *inter alia* contends that it is a case of scuffle between appellant and brother of prosecutrix which took place on 01.06.2021. FIR came to be registered on 01.06.2021 whereas alleged incidents of rape took place on 27&28.05.2021. The prosecutrix, at the behest of her brother, had given it colour of commission of offence of rape. From the examination and cross-examination of prosecutrix, it is quite evident that there are material contradictions in the statements and averments of prosecutrix are unbelievable. The appellant is in custody since 03.06.2021 and he is not involved in any other offence. The appellant has been wrongly implicated in the commission of alleged offence. The appellant is permanent resident of District Rewari. The appellant has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel submits that charges stand framed. She further submits that out of 19 witnesses, 8 have already been examined which includes prosecutrix. She fairly concedes that appellant is not involved in any other offence.

5. In the case in hand, the appellant is in custody since 03.06.2021 and he is not involved in any other offence. As per medical report, no human semen has been detected. The material witness i.e. prosecutrix stands examined, thus, possibility of winning over or threatening the witness is ruled out. The Trial Court yet has to return definite findings on the disputed issues. There are 19 prosecution witnesses and till date only 8 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of appellant being flee from justice or tampering the evidences or winning over/threatening the witnesses.

6. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present appeal deserves to be allowed and accordingly allowed. The appellant is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaq/Duty Magistrate concerned.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

24.03.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>