

CRM-9355-2023 in/and
CRA-S-585-2023
Date of decision: 03.03.2023

AJIT SONI @ KALIYA

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Riffi Birla, Advocate for the appellant.

Ms. Ruchika Sabherwal, DAG, Punjab.

VIVEK PURI, J. (ORAL)**CRM-9355-2023**

This is an application under Section 5 of Limitation Act for condonation of delay of 111 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and a delay of 111 days for filing the present appeal is condoned.

Disposed of.

Main case

The appellant has assailed the order dated 06.12.2021 passed by the Court of Sessions vide which the application for regular bail has been dismissed.

Notice of motion.

Ms. Ruchika Sabherwal, DAG, Punjab accepts notice on behalf of the respondent-State.

Learned counsel for the appellant contends that FIR has been lodged at the instance of the father of the victim alleging that the victim is aged about 17 years and she went missing from the house on 19.01.2021. It was suspected that the appellant has kidnapped the victim. It has been further submitted that the

victim was recovered on 10.02.2021 and in her statement recorded under Section 164 Cr.P.C, she has not attributed any allegation against the appellant. Furthermore, the report of chemical examiner does not indicate that the presence of spermatozoa in the vaginal swabs. Even, as per the statement of Dr. Kavita recorded during the course of trial, no male DNA was detected from the vaginal swabs of the victim. Although, the victim has attributed the allegations of commission of penetrative sexual assault upon the appellant in her statement recorded during the course of trial but the said version does not find mention in her statement under Section 164 Cr.P.C. In the trial Court, the victim has also stated that the appellant had clicked nude pictures and had been blackmailing her but no such obscene pictures have been recovered during the course of investigation. The appellant is in custody for a period of 02 years and 19 days and is not involved in any other case.

Learned State counsel has not assailed the aforesaid factual aspects and has opposed the bail application on the score that the victim during the course of trial has attributed allegation of commission of penetrative sexual assault.

Be that as it may that the victim in her statement under Section 164 Cr.P.C has not been attributed any allegation against the appellant. The evidentiary value of the statement recorded during the course of trial is to be adjudicated at the appropriate stage of trial. No spermatozoa/male DNA has been detected from the vaginal swabs of the victim. The appellant is in custody for a period of 02 years and 19 days. It has also been pointed out by the learned State counsel that out of 20, 11 witnesses have been examined so far. The conclusion of trial is likely to take sometime. No fruitful purpose will be served by detaining the appellant in further custody. As such, sufficient mitigating circumstances are

made out to extend the concession of bail to the petitioner.

Without expressing any opinion on the merits of the case, the appellant is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

The appeal is accordingly disposed of.

03.03.2023
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No