

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

285

CRA-S No.1893 of 2023
Date of decision: 13.12.2023

Kuldeep

... Appellant

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Nipun Vashist, Advocate,
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The present appeal has been filed by the appellant against the order dated 10.07.2023 passed by learned Additional Sessions Judge, Rewari in case bearing FIR No.210 dated 12.06.2023 registered under Sections 323, 354A, 452 and 506 of IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short "SC&ST Act") at Police Station Dharuhera, whereby an application for grant of anticipatory bail as filed by the appellant had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of

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this appeal are that the aforementioned FIR was registered on the basis of a written complaint submitted by the complainant "S" (name withheld) alleging therein that she belonged to Scheduled Caste and on the intervening night of 11/12.06.2023 at about 3 AM, she was alone in her house and was sleeping when the appellant who is a co-villager entered inside her room, caught hold of her hands and while throwing light of his mobile on her face, tried to molest her. She raised alarm, on hearing which her cousin brother Gaurav and one Manish reached there. They caught hold of the appellant and called the police but in the meanwhile, the appellant managed to flee while extending threat to kill. Initially a case under Sections 323, 354A, 452 and 506 of IPC was registered. During investigation, offence under Section 3 of the SC&ST Act has been added. Investigation is still going on. The appellant had filed an application before the Court of learned Additional Sessions Judge, Rewari for grant of anticipatory bail but the same had been dismissed vide order dated 10.07.2023.

3. It is submitted in the grounds of appeal and it has been argued by learned counsel for the appellant that he has been falsely implicated in this case. The provisions of Section 3 of SC&ST Act are not all attracted in this case. The remaining offences for which he had been booked are triable by Magistrate. Neither his custodial interrogation is required nor any recovery is to be effected from him. He is ready to join the investigation. The learned Additional Sessions Judge has committed an error in dismissing his bail application. Infact on the fateful night, the

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appellant was assaulted by the brothers of the complainant and was even admitted to the hospital. He was medico legally examined on 12.06.2023. He had also reported the matter to police but FIR bearing No.215 was registered only on 15.06.2023 against the brothers of the complainant. The FIR of this case was a counter blast to the same. With these broad submissions, it has been argued that the appeal deserves to be allowed.

4. The respondent No.1-State has contested the appeal in terms of reply filed by it. It is submitted therein and learned State counsel has argued that the complainant belonged to Scheduled Caste and this fact was very well known to the appellant being a co-villager. In her statement recorded under Section 164 of Cr.P.C., the complainant had reiterated the version as given in the complaint. The investigation is going on. Custodial interrogation of the appellant is required for proper investigation of the matter. The learned Additional Sessions Judge had rightly dismissed the bail application of the appellant as the same was not maintainable. Hence, learned State counsel has argued that the appeal does not deserve to be allowed.

5. I have heard learned counsel for the appellant and learned State counsel and have perused the record.

6. The appellant is alleged to have criminally trespassed into the house of the complainant on the intervening night of 11/12.06.2023, to have assaulted her, sexually harassed her and also to have criminally intimidated her. As per Section 3 (1) (w) (i) of the SC&ST Act, any

person touching a woman belonging to Scheduled Caste while knowing that she belongs to such caste and such act of touching being of sexual nature, is prima facie proved to have committed offence punishable under this Section. The complainant is a member of Scheduled Caste. Being a co-villager, obviously the appellant is presumed to be having knowledge about this fact. As such, the bar created by Sections 18 and 18A (1) of the SC&ST Act applies to this case. The learned Additional Sessions Judge while passing the order dated 10.07.2023 had made observations about the bar so created and as such it cannot be stated that any illegality or irregularity was committed by them while passing the impugned order. In view of the bar of Sections 18 and 18A (1) of the SC&ST Act, the appellant is certainly not entitled to the concession of anticipatory bail. Even otherwise, no sparing and extraordinary circumstance has been made out in this case for extending benefit of pre arrest bail to him. The custodial interrogation which is qualitatively more elicitation oriented than questioning a suspect which is well ensconced with favourable order under Section 438 of Cr.P.C., is certainly required for the purpose of thorough investigation as well as for disinterring useful informations required by the investigating agency. As such, I am of the considered opinion that the appeal does not deserve to be allowed. Accordingly, the same is dismissed.

7. However, it is clarified that nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in this case

which are only for the purpose of adjudicating the present appeal against dismissal of anticipatory bail application.

13.12.2023

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No