

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

223

CRA-S-2065-2023 (O&M)

Date of order: 08.08.2023

Kartar Singh @ Fauji

.....Petitioner(s)

Vs.

State of Haryana& Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay Kadyan, Advocate
for the appellant.

Nidhi Gupta, J.

Present appeal is filed against the order dated 17.07.2023 passed by learned Additional Sessions Judge, Panipat whereby the application for grant of bail pending trial to the appellant has been dismissed being a heinous crime, and since the trial is yet to commence as the case has not yet been committed before the learned ASJ in case FIR No.118 dated 29.03.2023 under Sections 376, 342 and 506 IPC and Sections 3(1)(s), 3(2)(v) of SC/ST Act, 1989 registered at Police Station Model Town, Panipat.

2. FIR in the present case was registered on the basis of statement of prosecutrix/complainant. Prosecution case as set out in the complaint/FIR is as follows:-

"To SHO Sir, Police Station Model Town Panipat Sir, I beg to say that my name is RXXX W/O Naseeb S/o SXXX r/o Gali No.10 Bhushan Mukhija Colony, Panipat. In my neighborhood a person named Fauji is a money-lender. I was in need of money for vegetable vend. On 27.03.2023, I had demanded an amount

of Rs.5000/- from Kartar Singh @ Fauji on interest. Then, I went to the house of Kartar @ Fauji on 29.03.2023 at 1:00 PM, then he had taken my mobile phone, and forcibly Kartar had made physical relations with me and extend the threatening that when he will call her, then, I had to come. I am in the family way of four months and thus, prayed that legal action may kindly be taken against the accused.”

3. On this complaint, formal FIR No.118 dated 29.03.2023 under Sections 376, 506 IPC was got registered with Police Station Model Town, Panipat (Annexure P1).

4. Learned counsel for the petitioner submits that the appellant has been falsely implicated in the matter. It is contended that the case of the prosecution is neither supported by the medical evidence on record, nor by the FSL report. Learned counsel submits that the medical examination of the prosecutrix was conducted on the same date of alleged incident i.e. on 29.03.2023 itself. It is submitted that as per the MLR (Annexure P2):

“No injury seen on external genitalia.

Hymen old torn with healed epithelial tags of epithelium.

No PV spotting at the time of examination.”

5. Learned counsel submits that DNA sample of the appellant was also taken on the same date of alleged incident i.e. 29.03.2023. However, even the FSL report (Annexure P3) is negative, as per which neither semen nor blood could be detected on any of the exhibits. It is stated that therefore, as per the MLR (Annexure P2) and FSL report (Annexure P3), no offence under Section 376 IPC is made out.

6. Learned counsel further contends that in the FIR (Annexure P1), there are no allegations made against the petitioner under SC/ST Act as the appellant had not used any derogatory remarks against the prosecutrix. It is submitted that thereafter the prosecutrix improved her case in her statement under Section 164 Cr.P.C. (Annexure P5), which was recorded on 03.04.2023 i.e. five days after the FIR was lodged on 29.3.2023, in which the prosecutrix modified her statement and therefore, offence under SC/ST Act was added.

7. Learned counsel submits that the appellant is a 56-year-old family man who has retired from the Army. It is vehemently submitted that the appellant has not committed any such act. It is submitted that no such incident ever took place as alleged. It is stated that the appellant has been embroiled in the incident as in fact, the appellant is a money lender and the mother of the complainant used to frequently borrow money from the appellant. It is stated that on the date of incident i.e. 29.03.2023, the complainant had demanded Rs.10,000/- from the appellant which he refused to give because the complainant and her mother already owed money to the appellant. It is submitted that it is for this reason that the appellant has been utterly falsely implicated in the present case.

8. Notice of Motion.

9. Ms. Deep Shikha Chauhan, AAG Haryana accepts notice on behalf of respondent-State.

10. Learned State Counsel submits that the appellant is in custody since 21.04.2023. Challan in the matter has been presented on

15.07.2023. Charges have not yet been framed and next date of hearing before the learned trial Court is 11.08.2023.

11. I have heard learned counsel for the parties.

12. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case, including the fact that the trial will take long time to conclude, and the fact that there are no other cases against the appellant, the present appeal is **allowed**. It is ordered that the appellant Kartar Singh @ Fauji be released on regular bail on furnishing surety/Bail bonds to the satisfaction of the CJM/ Duty Magistrate, concerned.

13. Pending application(s) if any also stand(s) disposed of.

08.08.2023
Sunena

(Nidhi Gupta)
Judge

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