

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2478-2023 (O&M)

Date of decision: 12.09.2023

Ved Prakash @ Anil

...Appellant(s)

Vs.

State of Haryana

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rahul Jaswal, Advocate
for the appellant.

NIDHI GUPTA, J.

Prayer in the present appeal is for grant of regular bail to the appellant in case FIR No.510 dated 25.08.2022 under Sections 363 and 366-A IPC and Section 84 of Juvenile Justice (Care and Protection of Children) Act, 2015 registered at Police Station Ganaur, District Sonapat, Haryana [Section 3(2)(v) of SC & ST Act (Prevention of Atrocities), Act, 1989; Section 6 of Protection of Children from Sexual Offences Act, 2012 and Sections 420, 419 and 376(3) IPC added] [Section 366-A IPC deleted] [Section 366 IPC added during presentation of challan].

2. FIR in the present case was registered on the basis of statement of father of the victim. Facts, as contained in the FIR are as follows:-

"To the S.H.O. Sahib, Police Station Gannuar: Sir I request that I Sunil S/O Maujiram Village Lakhu Buana Hall at present tenant at House Kamla, Dhankar Hospital, Behind Gandhi Nagar. I have three girls and one boy. My girl Meenakshi age

19 years, Shivani aged about 15 years. Today, dated 25/08/2022, at around 9 o' clock, my daughter went from home to the street of Satish Jain in from of the Ganaur Court. At around 2 o' clock in the afternoon, Meenakshi gave Shivani a scooter to go home. But till now, my daughter age 15 years old has not reached home. I have searched her a lot but all in vain. I suspect that someone has taken my daughter Shivani away with the hope of getting her married....."

3. It is inter alia submitted by learned counsel for the appellant that FIR in the present case is a concocted story just to falsely implicate the appellant. It is submitted that the complainant in the present case is habitual of registering false FIRs against unsuspecting boys like the petitioner on false allegation of kidnapping, etc. It is submitted that the complainant had earlier also registered FIR No.166 dated 15.05.2021 under Sections 363 and 366 IPC registered at Police Station Israna, District Panipat against one Anoop; and FIR No.181 dated 18.07.2017 under Section 354 IPC and Section 8 of POCSO Act, 2012 against Sagar Kumar and Robin Kumar; and thereafter, settled the matter with those persons and extracted money from them. Learned counsel further states that in both the above said FIRs, the accused therein were subsequently acquitted by the learned trial Court vide judgments attached as Annexure A10 and Annexure A11 respectively. It is submitted that accordingly, the present FIR is just a ploy to extract money from the appellant as well.

4. Learned counsel further submits that all the material witnesses in the present case already stand examined by the learned trial Court. It is contended that there are glaring discrepancies in their statements which do not support the prosecution case. In this regard, learned counsel refers to cross examination of the victim/PW1 wherein she has stated that *"...I was friend with accused Anil for 1/2 months...It is correct that I went alongwith accused Anil with my free will. I met accused Anil on that day for the first time...It is correct that in the hotel in which we stayed several other persons were also staying over there. I did not tell to any person on the way or in the hotel including the hotel staff about commission of rape upon me by the accused.....I did not try to escape or shout when accused Anil committed rape upon me. It is correct that accused Anil used to reside at Gujrat and I called him from Gujrat....."*.

5. Notice of motion.

6. Mr. Arjun Lakhanpal, Addl. AG Haryana accepts notice on behalf of the respondent and files custody certificate dated 11.09.2023 which is taken on record. As per the custody certificate, the petitioner is in custody since 1 year 13 days.

7. Learned counsel for the State submits that the victim was 15 years old on the date of incident/25.08.2022. It is submitted that the victim in her statement under Section 164 Cr.P.C. and testimony as PW1, has supported the case of the prosecution. Learned State Counsel contends that even if there are minor discrepancies in the statement of the victim, the same have to be disregarded as, in cases under the POCSO

Act, consent of the victim is irrelevant. It is submitted that even in the MLR it has been opined that the possibility of sexual intercourse cannot be ruled out. Learned State Counsel however, admits that all the material witnesses including the victim (PW1), complainant (PW2), mother of the victim (PW3) and sister of the victim (PW4) have all been examined whose testimonies are on record as Annexure A5 to Annexure A8 respectively.

8. Learned counsel further refers to custody certificate dated 11.09.2023 to submit that there is one other case against the appellant i.e. FIR No.189/2019 dated 05.07.2019 under Sections 323, 325, 34 and 506 IPC registered at Police Station Sadar Gohana, Sonipat. It is submitted that the appellant is in jail in the said case as well.

9. I have heard learned counsel for the parties.

10. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case, present appeal is **dismissed**. However, it is made clear that nothing stated above shall be deemed as an expression of opinion on the merits of the case.

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

12.09.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No