

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

104+219

CRA-S-2117-2022 (O&M)

Date of Decision: 14.03.2023

Mukul alias Mintu

...Appellant

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rohit Mittal, Advocate for the appellant

Ms. Priyanka Sadar, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

CRM-11403-2023

Application for placing on record deposition of prosecution witness No.3 dated 16.11.2022 (Annexure A-4) is allowed. The same is taken on record subject to just exceptions. Registry is directed to tag at appropriate place.

CRM stands disposed of.

CRM-40208-2022

For the reasons mentioned in the application, the application seeking condonation of delay of 80 days in filing the appeal is allowed.

CRM stands disposed of.

CRA-S-2117-2022

1. The appellant through instant appeal is seeking setting aside of impugned order dated 01.06.2022 whereby learned Additional Sessions Judge, Gurugram has dismissed the regular bail application of the appellant in the trial arising out of FIR No.6 dated 05.02.2022 under

Sections 313, 376(2)(n) & 34 of Indian Penal Code, 1860 (for short 'IPC') and Section 3(2)(5) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') registered at Women Police Station Sector 51, Gurugram.

2. The case of prosecution is that prosecutrix made a complaint to police on 05.02.2022 alleging that she came in contact with Mukul (appellant) son of Kapil Verma about 2 years ago and developed friendship with him. They used to talk on phone. He promised that he will marry her. He told her *Bua* that he will marry her daughter and *Bua* agreed to it. On 20.08.2020, Mukul repeatedly raped her on the pretext of marriage and impregnated her. Mukul provided her some tablets through a friend Pankaj to abort the child. Mukul told her that he will talk to his parents about his marriage but he did not do so. She rang up father of Mukul and Mukul came to meet her on 04.02.2022 and committed rape upon her forcibly without her consent.

3. Learned counsel for the appellant, *inter alia* contends that from the perusal of FIR and examination of the prosecutrix, it is quite evident that allegation of prosecutrix is that appellant had made physical relations with her on the pretext of marriage and now he is not performing marriage with her. The prosecutrix in her cross-examination has admitted that she had met appellant in Bhondsi Jail at Gurugram. The appellant is in custody since 25.02.2022 and he is not involved in any other offence. The prosecutrix is major and she had developed physical relations with the appellant at her own will. The appellant has

been wrongly implicated in the commission of alleged offence. The appellant is permanent resident of District Nuh. The appellant has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 12 witnesses, 5 have already been examined which includes the prosecutrix. The appellant is involved in the commission of grave offence, thus, no leniency is warranted and release of appellant would hamper the trial.

5. In the case in hand, the prosecutrix stands examined. In her examination as well as FIR, the allegation of prosecutrix is that appellant has made physical relations with the prosecutrix on the pretext of marriage and now he is not solemnizing marriage. The prosecutrix is major and she stands examined. She has admitted in her cross-examination that she had met appellant in Jail which *prima facie* shows that there was consensual relation between the parties. The appellant is in custody since 25.02.2022 and he is not involved in any other offence. There are 12 prosecution witnesses and till date only 5 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined. 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 and keeping in view judgments of Hon'ble Supreme Court in *Uday Versus State of Karnataka, (2003) 4 SCC 46; Deelip Singh alias Dilip Kumar Versus State of Bihar, (2005) 1 SCC 88; Deepak Gulati Versus State of Haryana, (2013) 7 SCC 675; Dr. Dhruvaram Murlidhar Sonar Versus State of Maharashtra and Others, (2019) 18 SCC 191* and *Naim Ahamed Versus State, (2023) Live Law (SC) 66*, this Court is of the considered opinion that present appeal deserves to 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

14.03.2023

Mohit Kumar

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*