

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214

CRA-S-2621-2023 (O&M)

Date of decision: 21.09.2023

Nikhil

...Appellant(s)

Vs.

State of Haryana

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Ashish Tewatia, Advocate
for the appellant.

Ms. Deep Shikha Chauhan, AAG Haryana.

NIDHI GUPTA, J.

Present appeal is filed against order dated 08.09.2023 passed by learned Additional Sessions Judge, (Fast Track Special Court), Kurukshetra whereby second regular bail application of the appellant has been dismissed in case FIR No.36 dated 03.06.2023 under Section 6 of POCSO Act, Section 376(2)(n) IPC and Section 3(2)(va) of SC & ST Act, 1989 registered at Women Police Station Kurukshetra, Haryana.

2. FIR in the present case was registered on the statement of victim herself and the same reads as follows:-

"...I was studying in Girls Senior Secondary School in 10th class and had taken tuition in Modal Town to improve the level of education. That Nikhil son of Dev Bahadur was a frequent visitor there. That Nikhil son of Dev Bahadur allured me to perform the marriage and went to hotel near old bus stand Kurukshetra and commit rape with me first time when I was about seventeen years old. Since then he has been continuously raping me by promising marriage. Currently, I have become pregnant due to repeated rape by Nikhil. Nikhil ruined my life. With folded hands I requested you to take the legal action

against Nikhil. I got married in the year 2022. There is a rift in the marriage due to Nikhil...”

3. Learned counsel for the appellant inter alia submits that the allegations made against the appellant in the present FIR are false and fabricated. It is submitted that the appellant and the complainant were in a consensual relationship as they were in love with each other. It is submitted that the FIR has been registered by the victim on the instructions of her family members. It is submitted that the complainant in her statement under Section 164 Cr.P.C. has categorically stated that she had lodged the FIR against the appellant under misconception, and that she now does not want to pursue the present FIR. Learned counsel contends that even in her deposition dated 04.09.2023 (Annexure P1) as PW2, the complainant/victim has been declared hostile as she stated that *“...Whatever statements I have given till date against the accused were under the pressure of my relatives and my family members. The accused never committed wrong act with me against my wishes.”*

4. Learned counsel further submits that even in her cross examination, the victim has not supported the prosecution case. It is further submitted that there is an inordinate and unexplained delay of about two years in lodging the FIR.

5. Learned State Counsel files custody certificate dated 20.09.2023 which is taken on record. As per the custody certificate, the appellant has been in custody as under trial for a period of 3 months and 16 days. Learned State Counsel submits that in the year 2021, when the first incidence of rape took place, the victim was a minor. It is submitted that

the appellant is even alleged to have impregnated the victim. Thereafter the victim had solemnised marriage in 2022 with someone else. However, the marriage of the victim was on the verge of breakdown. Learned State Counsel further contends that in her statement under Section 164 Cr.P.C., the victim had reiterated her version in the FIR; and that it has been incorrectly stated by the appellant that the victim in her statement under Section 164 Cr.P.C. had not supported the prosecution case.

6. Learned State Counsel further submits that upon medical examination, the victim was found to be pregnant. It is submitted that Medical Termination of Pregnancy (MTP) of the victim was conducted and foetus was taken into police possession, which was forwarded to FSL, Madhuban. However, FSL and DNA reports are still awaited. Learned counsel further states that admittedly, in her testimony as PW2, the victim has not supported the prosecution version, however, the same would not constitute a ground for releasing the appellant on bail as the appellant had committed a crime against society at large. It is further submitted that there is every apprehension that if released on bail, the appellant would tamper with evidence and try to influence witnesses who are yet to be examined in the matter. Learned State Counsel further states that the trial is moving at fast speed and other material witnesses are yet to be examined.

7. No other argument is raised on behalf of the parties.

8. I have heard learned counsel for the parties.

9. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances in the case, including the fact that material witnesses are yet to be examined, and the fact that FSL and DNA reports are still awaited, and the period of custody undergone, I find no ground is made out to exercise the discretionary power or to interfere in the impugned order. Present appeal accordingly stands **dismissed**.

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

21.09.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No