

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**230**

CRA-S-2749-2023

Date of Decision: 13.10.2023

Aashish Ali

.... Appellant

Versus

State of Haryana

.... Respondent

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. I.S. Khara, Advocate for the appellant.

Ms. Deepshikha Chauhan, AAG, Haryana.

**NIDHI GUPTA, J. (ORAL)**

The appellant has preferred the present appeal against the order dated 15.09.2023, passed by the learned Additional Sessions Judge/Fast Track Court (POCSO), Panipat, dismissing the application filed by the appellant for grant of regular bail in case FIR No. 69 dated 25.01.2020 registered under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 328, 341, 354, 365, 376-D, 363 read with Section 34 IPC at Police Station Model Town, Panipat.

The brief facts of the case/FIR as detailed in the impugned order reads as under:-

*“The prosecution case is that on 24.01.2020 the victim was found unconscious near DAV Park Model Town, Panipat and two boys in a car had been apprehended by the public. The victim, on gaining consciousness, got a statement recorded that she is a student of 11<sup>th</sup> standard of DAV*

*School. She had proceeded for tuitions from her house at 5:00 P.M. on a Scooty. Two boys namely Aashish and Vishu met her in their Maruti Swift Car near DAV Park Model Town, Panipat. They induced her to sit in the Car and made her drink some substance laced with sedative. They took the vehicles towards the canal. The car was being driven by Vishu. They stopped the vehicle at a secluded place and committed rape upon her. Thereafter, she became unconscious. They came back to DAV Park where two other associates were present. They also came near the Car but she was unconscious. Her uncle had arrived at the spot. The police also arrived and she was taken to the hospital. On the basis of complaint, FIR in the present case was registered. The investigation was set into motion. The statement of the victim under Section 164 Cr.P.C. was got recorded. The applicant-accused was arrested on 25.01.2020.”*

Learned counsel for the appellant, *inter alia*, submits that the allegations of rape made against the appellant in the aforesaid FIR are vague and un-substantiated. It is submitted that as per DNA report dated 21.10.2020 (Annexure A-4), DNA found on the exhibits given by the victim has matched with that of the main accused, namely, Vishu, but has not matched with that of the present appellant, therefore, it is clear that the allegations of rape levelled against the appellant are false. As per the call detail record, the appellant was not present at the place of occurrence, as alleged in the FIR. The appellant has been in custody since 25.01.2020. The trial is likely to take long time. No useful purpose will be served by further detention of the appellant in custody. Thus, it is prayed that the appellant may be released on regular bail.

Learned counsel for the State submits that custody certificate of the appellant is not available, however, she admits that the appellant has been in custody since 25.01.2020. Learned counsel for the State also admits the fact that as per DNA report (Annexure A-4), DNA on the garment of victim has matched with that of the main accused, namely,

Vishu and not the appellant herein. She further submits that now the trial is at the stage of recording the statements of the accused under Section 313 Cr.P.C. and defence evidence, if any.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that the appellant has been in custody since 25.01.2020 and also the fact that the case is at the stage of recording the statements of accused under Section 313 Cr.P.C. and defence evidence, if any, therefore, conclusion of trial will take considerable time and no useful purpose would be served by further detention of the appellant, the present appeal is **allowed**.

The appellant-Aashish Ali S/o Sheikhu Chauhan, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

**13.10.2023**

*rishu*

**( NIDHI GUPTA )  
JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable**

**Yes/No**