

2023:PHHC:058336

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

CRA-S-2469-2022

Date of Decision: 25.04.2023.

SAHIL

... PETITIONER

VS.

STATE OF HARYANA

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Mayank Sharma, Advocate
for the appellant.

Mr. Surinder Kumar Dagar, DAG, Haryana.

VIVEK PURI, J.(ORAL)

1. The present appeal has been preferred against the order dated 21.05.2022 in the case bearing FIR No. 35 dated 21.05.2022 under Sections 354-A, 354-D, 376, 506 IPC, Section 67-A of the Information and Technology Act and Section 3(2)(V)(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
2. Custody certificate has been placed on record.
3. Learned counsel for the appellant contends that initially the FIR was registered on the basis of the elaborate and detailed application submitted by the prosecutrix against the appellant, his mother and a friend Bharat Yogi. Challan has been presented only against the appellant. In the FIR, the allegations are with regard to threats extended by the appellant to hurt himself and also exploiting the prosecutrix on the basis of some videos and photographs. It has been submitted that the contents of the application are silent with regard to the allegation of commission of rape. In her statement recorded under Section 164 Cr.P.C., the prosecutrix had alleged that on the false pretext of marriage, wrong deeds were done with her by the

appellant but significantly, no specific date, place and instance of such wrong act has been mentioned. In the statement, Annexure P-4, which has also been recorded on 21.05.2022, there is only a vague allegation with regard to commission of rape on the false pretext of marriage. In the statement recorded during the course of trial, the prosecutrix has given an improved version to the effect that she was offered some soft drink in a room of the hotel and, thereafter, she started feeling dizziness and rape was committed upon her. The prosecutrix is aged about 21 years and furthermore, there is nothing to indicate that any derogatory remarks against her caste were uttered in public view. He further submits that the appellant is in custody for a period of 11 months and 03 days and not involved in any other case.

4. Learned State counsel has opposed the bail application on the score that there are specific allegations with regard to commission of rape attributed against the petitioner.

5. On a query, learned State counsel submits that there is no report of FSL to corroborate the allegations with regard to commission of sexual intercourse and furthermore, out of 18, 06 witnesses including the prosecutrix have been examined. Even, no video clipping pertaining to prosecutrix could be found in the mobile phone of petitioner, though there were some threatening messages.

6. The FIR has been initially registered under Sections 354-A, 354-D and 506 IPC. There is no allegation in the application submitted by the prosecutrix on the basis whereof, the FIR has been registered with regard to commission of rape. The prosecutrix was aged about 21 years at the time of occurrence. The allegation with regard to commission of wrong

deed has been specified in the statement under Section 164 Cr.P.C. but significantly, no specific date, place and instance of such wrong act has been mentioned. Even, the allegation with regard to administration of some stupefying material in a room in the hotel and commission of rape has not been specified in the earlier statements. The evidentiary value of such statement will be a debatable and moot point before the trial Court. The prosecutrix has been examined and it cannot be said that the petitioner can, in any manner, influence or win over the prosecutrix. It has not been disputed that the prosecutrix was medico-legally examined but no material was sent to FSL for examination. Out of 18, 06 witnesses have been examined and the conclusion of trial is likely to take some time.

7. In such circumstances, sufficient grounds are made out to extend the concession of bail to the appellant. Accordingly, without making any observation on the merits of the case, it is directed that the appellant be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

8. Appeal is disposed of.

25.04.2023
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No