

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S-2757-2022 (O&M)

Date of Decision: 08.05.2023

Mehroof

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. Nancy Vashisth, Advocate for
Mr. Namit Khurana, Advocate for the applicant-appellant

Ms. Priyanka Sadar, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

CRM-50294-2022

For the reasons assigned in the application, the same is allowed and delay of 108 days in filing the appeal is condoned.

CRM stands disposed of.

CRA-S-2757-2022

1. The appellant, through instant appeal under Section 14-A of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short '**SC/ST Act**') is seeking setting aside of impugned order dated 13.06.2022 whereby learned Additional Sessions Judge, Karnal has dismissed bail application of the appellant in FIR No.182 dated 10.11.2021 under Sections 363, 366, 376(2)(n), 506 of Indian Penal

Code, 1860 (for short 'IPC') and Section 3(1)(r) & 3(1)(s) of SC/ST Act, registered at Police Station Sadar Jagadhari, District Yamunanagar.

2. The case of the prosecution is that on 10.11.2021, father of the prosecutrix lodged a complaint alleging that his eldest daughter who is 20 years old had left home at around 08:00 AM on 08.11.2021 and till date has not come back. He apprehends that Mehroof has enticed her. On the basis of statement, FIR was registered under Section 346 of IPC. The prosecutrix was later on recovered and on the basis of statements, Sections 363 & 366 of IPC and Section 3 of SC/ST Act were added. At a later stage, Sections 376 & 506 of IPC were invoked.

3. Learned counsel for the appellant, *inter alia* contends that prosecutrix has already been examined. She at the time of commission of alleged offence was 20 years old. She had specifically disclosed that she made physical relations with the appellant at her own accord. The physical relations were made on different occasions. She at her own accord left home with the appellant. The appellant is in custody since 21.11.2021 and he is not involved in any other crime. The appellant has been wrongly implicated in the commission of alleged offence. The appellant is permanent resident of District Yamunanagar. The appellant has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 06.05.2023 is taken on record. As per custody certificate, the appellant is in custody since 22.11.2021 and he is not involved in any other offence.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 18 witnesses, 12 have already been examined which includes prosecutrix. The appellant is involved in the commission of grave offence, thus, no leniency is warranted and release of appellant would hamper the trial.

6. In the case in hand, the appellant is in custody since 22.11.2021 and he is not involved in any other offence. The prosecutrix at the time of commission of alleged offence was major and she had accepted that she made physical relations at her own will and she left her home at her own accord. The question of '*consent*' as contemplated by Section 90 read with Section 375 IPC is disputed question of fact and the Trial Court yet has to return definite findings on the disputed issues. There are 18 prosecution witnesses and till date 12 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined, thus, there is no possibility of winning over of witnesses. 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.

7. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be 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.

8. 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

08.05.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>