

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

237

CRA-S-289-2024 (O&M)
Date of decision: 02.04.2024

Govinda ...Appellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Amit Khatkar, Advocate
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Lokesh Vohra, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The present appeal has been filed under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocity) Act, 1989 (*for short 'the SC/ST Act'*) by the appellant challenging the order dated 12.01.2024 passed by the learned Additional Sessions Judge, Hisar, whereby an application filed by him under Section 438 Cr.P.C. for grant of anticipatory bail in case arising out of FIR No. 651 dated 09.12.2022, registered under Sections 376(2)(n) of IPC and Section 3(2)(v) of SC/ST Act at Police Station Narnaud, had been dismissed.
2. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR has been registered on the basis of a written

complaint filed by the complainant/victim 'N' (*name withheld*) on 09.12.2022 alleging therein that on the pretext of providing loan to her for the purpose of purchase of a buffalo, about 1 ½ years ago, the appellant had taken her to a room of a building in Hansi and had ravished her. He had also secretly made a video of the occurrence and thereafter had started blackmailing her and extracting money from her even since then. She also alleged that in the months of March and April, 2022 also, he took her in his car to Hansi and she was sexually harassed and subjected to rape by him. He even took a cheque for a sum of Rs. 20,000/- from her on 01.07.2022 and now he was threatening her to make her video viral, if she did not give money to him and was also abusing her in the name of her caste. She also alleged that the appellant had even shown her video to some of her co-villagers and she was being mentally tortured and was on the verge of committing suicide. On these allegations, the FIR has been registered and investigation proceedings are going against the appellant. He had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Hisar but the same had been dismissed, vide impugned order dated 12.01.2024. Feeling aggrieved, the appellant has preferred the present appeal.

3. Learned counsel for the appellant has argued that the impugned order is not not sustainable in the eyes of law as while passing the same, learned Additional Sessions Judge, Hisar ignored the fact that there was material on record to show that the victim had been borrowing money from him from time to time since the year 2021 and he had given an amount of Rs. 50,000/- and then Rs. 60,000/- to her in the years 2021 and 2022 as friendly loan. She had even approached him for advancing a sum of

Rs. 35,000/- with an assurance to return the same along with interest and the said amount had also been given by him to the victim as loan. However, when she did not return the same after the lapse of a considerable time, then on his repeated demands, she issued a cheque for Rs. 70,000/- in his favour. The said cheque had bounced and a notice was issued against the victim by him on 15.10.2022. It is submitted that thereafter, the appellant had filed a complaint under Section 138 of the Negotiable Instruments Act (*for short N.I. Act*). Even a cancellation report was prepared by the police in his favour previously but re-investigation has been ordered subsequently. It is argued that the custodial interrogation of the appellant is not required at all. The allegations in the FIR are false on the basis of the same. No case for either of the provisions of SC/ST Act has been made out against the appellant in this case. The victim is a major and a mature lady. With these broad submissions, it is argued that the present appeal deserves to be accepted and the appellant deserves to be given benefit of pre-arrest bail.

4. Status report has been filed by the respondent-State. Learned State counsel, assisted by learned counsel for the complainant, has argued that there are serious allegations against the appellant. He has ravished the victim on the pretext of providing her loan to purchase a buffalo. In her statement recorded under Section 164 Cr.P.C., the victim had levelled specific allegations that the appellant had ravished her repeatedly. His custodial interrogation is required for thorough investigation in the matter. It is also argued that in view of bar created under Section 18 of SC/ST Act, the application for grant of anticipatory bail is even otherwise not maintainable and, therefore, even this appeal is not maintainable. Hence, it is urged that the present appeal is liable to be dismissed. Learned counsel for respondent

No. 2/complainant had sought time to file reply but no reply has been filed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

6. The appellant has been booked and chargesheeted for commission of offence punishable under Section 376(2)(n) of IPC on the allegations that he repeatedly ravished the respondent No. 2 on the pretext of providing loan to her for the purpose of purchase of a buffalo and then had been blackmailing her. The offence of 'rape' is defined under Section 375 of IPC setting out certain circumstances. Relevant for the purpose of this case, is the second circumstance that a male subjecting a female to sexual intercourse without her consent, commits offence of rape. As per Explanation-2 of Section 375, 'consent' means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. It will also be relevant to refer to Section 90 of IPC, as per which a 'consent' given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, is not consent. It is well settled proposition of law that the 'consent' with respect to Section 375 of IPC, involves an active understanding of the circumstances, actions and consequences of the proposed act. The consent of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act.

7. As per the allegations, as levelled by the respondent No. 2/complainant in the FIR lodged by her, the appellant had firstly allured her on the pretext of providing loan to her for the purchase of a buffalo and

had taken her to room of a building, wherein she had been ravished for the first time about 1 ½ years back. She further alleged that he had secretly prepared some obscene video of hers and had started blackmailing her by taking money from her and extending threats to kill her, if she disclosed about the incident to anyone and subsequently also, money had been extorted from her and she had been ravished by him. On perusal of the material placed on record, it is revealed that a complaint had been filed by the appellant under Section 138 of N. I. Act as against the respondent No.2/victim shortly before lodging of FIR of this case. The claim of the appellant is that in fact, the victim had been borrowing money from him by way of friendly loan from time to time and as she had not returned the same, therefore, he had demanded the same back and a cheque for a sum of Rs.75,000/- had been issued by her in his favour, which had been dishonoured resulting into filing of complaint by him and the present FIR was a counterblast to the same. The appellant has also placed on record Annexures A-1 to A-3, which are copies of affidavits and one pronote respectively, shown to be thumbmarked/signed by the victim on different dates during the years 2021-22, showing that she had been borrowing different amounts of money from the appellant. This fact had not been mentioned by the victim at the time of lodging of FIR. The victim is an adult woman, aged about 42 years. Though at the stage of considering an application for grant of bail, it is not appropriate for the Court to draw any conclusion, much less to return any finding as any decision or finding must await a thorough assessment and evaluation of evidence to be led by the parties at the trial, however, still keeping in view the fact that neither there is any material on record to show that any video has been prepared by the

appellant, which had been made viral nor it is revealed that the appellant had been extorting money from the victim. Rather, it has come on record that in fact the victim had issued a cheque for a sum of Rs. 75,000/- in favour of the appellant, which had been dishonoured and the appellant himself had lodged a complaint against her shortly before lodging of the FIR, which fact has not found any mention in the complaint/FIR and even during the course of arguments, neither any contention has been raised on behalf of respondent No. 2/victim that the aforesaid cheque had not been issued by her and complaint filed under Section 138 of N. I. Act is not pending against her nor any stand has been taken by her to the effect that she was not having knowledge of filing of such complaint by the appellant, this Court is persuaded to observe that it is a debatable question as to whether offence under Section 376(2)(n) of IPC has been made out as against the appellant or not.

8. Further, so far as the provisions of offence punishable under Section 3(2)(v) of SC/ST Act are concerned, it is very much relevant to mention here that this provision is attracted only when it appears that any offence under the provisions of IPC punishable with imprisonment for a period of 10 years or more has been committed as against a person/member of a Scheduled Caste or a Scheduled Tribe. Since in this case, the question as to commission of offence punishable under Section 376(2)(n) of IPC is itself debatable, therefore, no prima facie case for commission of offence punishable under Section 3(2)(v) of SC/ST Act can be stated to have been made out, thereby attracting the bar under Section 18 of SC/ST Act. Accordingly, it is held in the peculiar facts and circumstances of the case that the appellant deserves to be extended benefit of pre-arrest bail.

9. Accordingly, the present appeal is allowed. The appellant is granted concession of anticipatory bail subject to the condition that he would surrender before the Investigating Officer/Arresting Officer within a period of ten days from today and in that eventuality, the Investigating Officer/Arresting Officer shall release him on bail, on furnishing personal/surety bonds to his satisfaction by the appellant, and further subject to the condition that the appellant shall not influence/intimidate or try to meet the victim/complainant, shall not visit her house or try to influence any other witness of the case. This order shall also be subject to the following conditions:-

- (i) The appellant shall cooperate with the investigation and shall appear before him as and when required.
- (ii) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer.
- (iii) He shall not commit any similar offence while on bail.

10. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

11. It is made clear that the observations made hereinabove are only for the purpose of deciding the present appeal and the same shall not be construed as an expression of opinion on the merits of the case.

02.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>