

CRA-S-564-2024

2024.PHHC.079364



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**215 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA-S-564-2024

Date of decision: 31st May, 2024

Vishal

...Appellant(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Arvinder Aroa, Advocate for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

The instant appeal has been filed under Section 14-A(2) of the Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') against the order dated 29.09.2023 passed by the Court of Learned Additional Sessions Judge, Fast Track Court under POCSO Act, Amabala in case arising out of FIR No. 116 dated 05.03.2022 under Sections 323, 342, 365, 377, 366-A and 376-D of IPC, 1860 and Section 3 of SC/ST Act and Sections 6, 17 and 21 of POCSO Act, 2012 whereby an application for grant of bail as filed by the appellant has been dismissed.

2. The case of the prosecution as briefly narrated is that the aforementioned FIR has been lodged on the basis of a written complaint filed by the complainant 'K' (name withheld) on 04.03.2022, alleging



therein that her youngest daughter 'R' (name withheld) who was a specially abled person and due to her weak intellect, she used to follow any stranger, had gone missing from her house and she could not find her despite making search for her. A case under Section 365 of IPC was initially registered. Investigation proceedings were initiated. The victim was traced out on the same day. She was medically examined. Her statement under Section 164 of Cr.P.C. was also recorded. Offences under Sections 6, 7 and 21 of POCSO Act and Sections 328, 342 and 377 of IPC were also added. As the victim belongs to schedule caste, therefore, offence under Section 3 of SC/ST Act was also added. The appellant and co-accused were arrested. They were also medically examined. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court and presently, they are facing trial. The appellant had filed an application for grant of regular bail before the learned trial Court which was dismissed by the impugned order.

3. It is argued by learned counsel for the appellant that the impugned order is not sustainable in the eyes of law as while passing the same, the Court of learned ASJ ignored the fact that he is in custody since 06.03.2022. The co-accused Sahil whose case is on similar footing has been extended benefit of bail on 06.06.2022. The trial is likely to take time. The victim and her mother have already been examined and there are no chances of his intimidating the witnesses. Therefore, it is argued that the appeal deserves to be allowed and he deserves to be extended benefit of bail.

4. *Per contra*, learned State counsel has argued that there are



serious and specific allegations against the appellant. He facilitated the commission of act of aggravated penetrative sexual assault upon the prosecutrix who is a specially abled child by standing as guard outside in the cremation ground in the toilet of which, the co-accused Gaurav had committed rape upon her. He along with the co-accused Sahil had bolted the door of the room wherein the prosecutrix had been taken by the co-accused Gaurav. She duly identified the appellant in the Court and has fully supported the prosecution version in her sworn deposition. It is also argued that all the prosecution witnesses already stand examined and the trial is at its fag end. Therefore, it is argued that the appeal does not deserve to be allowed.

5. I have heard learned counsel for the appellant as well as learned State counsel at considerable length and have gone through the record carefully.

6. As per the allegations in the FIR, the accused Gaurav in connivance with the co-accused Sahil had taken away the prosecutrix out of her lawful guardianship by making her sit on a motor bike by co-accused Sahil. She was firstly taken to a vacant plot and then to a house wherein she was offered tea and on drinking which she was in a state of intoxication and thereafter, they took her to the toilet of cremation ground wherein the **appellant** and co-accused Sahil stood as guard after bolting the door of the toilet from the outside, whereas the co-accused Gaurav had committed rape upon her.

7. The prosecutrix is admittedly a specially abled girl who was



minor as on the date of occurrence. As per the allegations due to her weak mental abilities, she had been allured away by the co-accused Gaurav and Sahil on the fateful day and was taken to a cremation ground wherein the present appellant and the co-accused Sahil bolted the door of the toilet of the cremation ground from outside and facilitated commission of act of aggravated penetrative sexual assault upon the prosecutrix who had been administered some stupefying drug thereby leading her to a state of intoxication. The allegations against the appellant are serious in nature as he facilitated the commission of a serious crime as against the prosecutrix. All prosecution witnesses have since been examined. The trial is at its fag end. Keeping in view of the nature of the subject offences, the quantum of sentence which the conviction may entail and the fact that the trial has concluded and there are no chances of any further delay in the final disposal of the trial and further keeping in view the attendant fact and circumstances of the case, I am of the considered opinion that the appeal does not deserve to be allowed. Hence, the same is dismissed.

8. Since the main appeal has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

31st May, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |