

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

223

CRA-S-599-2024

Date of decision: 20.02.2024

Mubarik

..... Appellant

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

PRESENT: Mr. Afjal Hussain, Advocate for the appellant.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Mr. Munfaid Khan, Advocate
for respondent No. 2/complainant.

NIDHI GUPTA, J. (ORAL)

1. Vakalatnama filed on behalf of respondent No.2-complainant is taken on record.

2. The appellant has preferred the present appeal against the order dated 01.02.2024 passed by the learned Additional Sessions Judge, Fast Track Special Court for trial of offences under the POCSO Act, Nuh, dismissing the application filed by the appellant for grant of regular bail in case FIR No. 231 dated 20.11.2022 registered under Sections 363, 366A, 376, 384, 120-B, 506, 201/34 IPC and Sections 4-17 of the Protection of Children From Sexual Offences Act, 2012 and Section 3(2)(VA) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Rojka Meo.

3. The aforesaid FIR was registered on the basis of complaint moved by respondent No. 2/complainant/father of victim which reads as under:-

“To the SHO Police Station Rojka Meo, Subject:-complaint for black mailing and committing rape. Respected Sir, I Laxman son of Kalu Ram, r/o Village Udaka, Tehsil Nuh District Mewat. My daughter Sheetal aged about 16 years, student of 11th class in Govt. School. On dated 09.11.2022 at about 02:30 PM my daughter Sheetal was trying to commit suicide by hanging then my wife all of sudden saw her and started shouting then the neighbors came there and put my daughter down. My family members took her to Vardan Hospital from where she was referred to Gurgaon Safe Hand Hospital. On dated 11.11.2022 she was discharged so we inquired about the reason then she told that in her class there is a boy namely Fakrudin son of Sher Mohhamand who told her about one month back that his brother Mubarik Pehlwan, a criminal wanted to make friendship with her or he would kill her. After that Mubarik stopped her in the way and asked that his brother had already told her about him and he wanted to talk to her or he would throw acid on her. He also threatened to kill her brother and father. Due to fear she went along with Mubarik. Mubarik committed rape with her and took nude photos. Due to fear she did not tell about this to anybody in her family. After that while going School he told my daughter that he is contesting for the election of Sarpanch. He needs money. He threatened my daughter to bring money or he would viral the photographs of my daughter in the village, facebook. Then my daughter gave Rs. 4,37,000/- and 4 Tola Gold to him. Two times his brother Fakrudin came to Harijan Chaupal where I gave him Rs. 50-50 thousand and Mubarik said that he would delete the photographs. Mubarik defeated in the elections, so on dated 09.11.2022 when she was going to School the Mubarik stopped her on the way in his car and told that he had not deleted her photos. He forces her to sit in the car and due to fear my daughter sit in the car and then he took my daughter to Sohna OYO room where he committed rape with her. My daughter was having documents in her bag including her Aadhar card which were taken away by him. It is therefore, respectfully prayed that kindly take appropriate legal action against the accused persons. Sd/- Laxman son of Sh. Kalu Ram”

4. Learned counsel for the appellant, *inter alia*, submits earlier appeal filed by the appellant for the same relief bearing CRA-S-2906-

2023, was dismissed as withdrawn by this Court vide order dated 13.10.2023 (Annexure P-7), on the ground that the victim's mother was not examined, as despite issuance of non-bailable warrants against her, she had refused to appear. Learned counsel submits that there is unexplained delay of around 11 days in lodging the FIR, as the last occurrence was alleged to have occurred on 09.11.2022, but the FIR was got registered on 20.11.2022. It is further submitted that though, the allegations made in the FIR are that the appellant had made obscene photographs of the victim, however, no evidence in this regard was produced by the prosecution. Even the FSL report is negative. It is stated that a false case has been planted upon the appellant due to party faction as the appellant had contested the elections of Sarpanch. The appellant is in custody since 20.11.2022. All the private-witnesses stand examined by the trial Court. 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 appellant may be released on regular.

5. No other argument is raised on behalf of the appellant.

6. *Per Contra*, learned counsel for the State has filed custody certificate dated 19.02.2023, which is taken on record, as per which the appellant has been in custody as an undertrial for a period of 01 year and 26 days. Learned counsel for the State vehemently opposing the prayer for grant of regular bail to the appellant submits that at the time of occurrence, the victim was 16 years of age whereas petitioner was 30 years old. As per FIR, the last occurrence was alleged to have occurred on 09.11.2022, however, the FIR was got lodged on 20.11.2022 and it is for this reason the FSL report is negative. The victim in her deposition as

PW-1 has fully supported the prosecution case; and the complainant too in his deposition as PW-2 has supported the case of the prosecution. Learned counsel for the State further informed that due to repeated rape committed by the appellant, the victim had even tried to commit suicide; however, she was saved by parents. He further submits that out of total 27 prosecution witnesses, 02 have been examined, 01 witness was given up and 24 prosecution witnesses are remained to be examined.

7. Learned counsel for the respondent No. 2-complainant also vehemently opposed the prayer for grant of regular bail to the appellant and submits that the appellant is charged with commission of repeated rape with a minor school going girl. He demanded Rs.2,37,000/- from the victim as extortion under the threat that he will viral her obscene photos/videos on facebook. Learned counsel further submits that 02 days after the incident, real brother of the appellant had tried to kill the complainant and an FIR No. 0049 dated 22.03.2023, under Sections 307 and 506 read with Section 34 IPC was also got registered in this regard, against the real brother of the appellant. Thus, it is prayed there is no change in the circumstance and the instant appeal for grant of regular bail to the appellant may be dismissed.

8. I have heard learned counsel for the parties.

9. Without commenting on the merits of the matter, however keeping in view the totality of facts and circumstances of the case; seriousness of allegations leveled against the appellant and also the fact that the appellant is alleged to have ruined the life of a minor school going girl and had committed repeated rape upon her, I find no ground is made out at this stage to interfere with the impugned order dated 01.02.2024

vide which application of the appellant under Section 439 Cr.P.C., seeking regular bail was dismissed by the learned Additional Sessions Judge, Fast Track Special Court for trial of offence under the POCSO Act, Nuh. Accordingly, the present appeal is **dismissed**.

20.02.2024
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(NIDHI GUPTA)
JUDGE

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