

2024:PHHC:075776



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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1075-2024 (O&M)
Date of decision: 28.05.2024

Vikas @ Vicky
...Appellant

Versus

State of Punjab and another
...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ahok Kumar Khunger, Advocate
for the appellant.

Mr. A. S. Samra, AAG, Punjab.

Mr. Rhythem Bajaj, Advocate
for respondent No. 2/complainant.

MANISHA BATRA, J. (Oral)

1. The present appeal has been filed under Section 14-A 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 30.11.2023, passed by the learned Additional Sessions Judge, Fast Track Special Court, Fazilka (hereinafter referred to as 'the trial Court'), whereby an application filed by him under Section 439 Cr.P.C. for grant of regular bail in case arising out of FIR No. 88 dated 08.08.2023, registered under Section 376 of IPC and Section 3(2)(va) of SC/ST Act (added later on) (wrongly mentioned as Section 3(3)(5) of SC/ST Act) at Police Station Bahav Wala, District Fazilka, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of the statement recorded by the prosecutrix 'A' (*name withheld*) on 08.08.2023, alleging therein that she was working on contract basis at DC Office Rai Singh Nagar. She came in contact with the present appellant in the year 2017, while she was studying in 11th Class in a local school, who, by inducing her on the pretext of performing marriage with her, had developed physical relations with her and had kept on maintaining the same till August, 2023. She recorded that on 05.08.2023, at about 8:00 PM, he called her in his fields and committed rape upon her and when she insisted him to get the marriage solemnized with her, he started extending threats to her and bluntly refused to do so while proclaiming that his aim was to physically exploit her, which had been accomplished by him and now she could do whatever she wanted to do. She, therefore, prayed for taking action against the appellant. Initially, a case under Section 376 of IPC was registered. Investigation proceedings were initiated. The appellant was arrested. During the course of investigation, offence under Section 3(2)(va) of SC/ST Act was added. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented and presently, the appellant is facing trial for commission of aforementioned offences.

3. The appellant had moved an application for grant of regular bail before the learned trial court which had been dismissed, vide impugned order dated 30.11.2023. Thereafter, the appellant had filed a petition for bail before this Court, bearing number **CRM-M-62500-2023**. However, the same was dismissed as withdraw on 29.02.2024, while granting liberty to the

appellant to file an appeal challenging the impugned order dated 30.11.2023.

Hence, the present appeal.

4. It is argued by learned counsel for the appellant that the impugned order dated 30.11.2023 is not sustainable in the eyes of law and is liable to be set aside as the prosecutrix who was an adult female was in consensual relationship with him from the last more than 06 years and they had also remained in live-in relationship for a long period of time. Since no promise to perform marriage with her was given by him at any point of time and as now their relations had turned sour, therefore, the prosecutrix had falsely implicated him in this case.

5. It is further argued that the trial is likely to take time. His custodial interrogation is no more required. No useful purpose would be served by keeping him in custody any more. The ingredients for commission of any offence punishable under the provisions of SC/ST Act are not attracted in this case as the fact that it was a case of rape itself has not been established, the relationship between the parties being consensual in nature. With these broad submissions, it is urged that the impugned order be set aside, the appeal be accepted and the appellant be extended benefit of bail.

6. Status report has been filed by respondent No. 1-State. Learned state counsel, assisted by learned counsel for respondent No. 2/complainant, has argued that the prosecutrix was belonging to scheduled caste community. It was the appellant, who had kept on committing rape upon her for a long period of time on the pretext of and by giving making inducement to perform marriage with her. There are serious allegations against the appellant. The material witnesses are yet to be examined. There are chances

of the appellant's intimidating the prosecutrix and other material witnesses, if extended benefit of regular bail. Therefore, it is argued that the appeal does not deserve to be allowed.

7. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

8. The allegations against the appellant are that he induced the prosecutrix to maintain physical relationship with him for a period of 06 years by giving false promise to marry her, while knowing since the very inception that said promise was false and then refused to perform marriage with her and thereby repeatedly sexually harassed her and committed offence punishable under section 376(2)(n) of IPC. As per the further allegations, since the prosecutrix belongs to scheduled caste, therefore, he has also become liable to be prosecuted and tried for commission of offence punishable under Section 3(2)(va) of the SC/ST Act.

9. The prosecutrix is an adult female, who was 27 years' old at the time of lodging of the FIR of this case. Admittedly, the parties were in consensual physical relationship from the last more than 06 years. Since at no point of time during the interregnum, any complaint had been lodged by the prosecutrix, the relationship between them appears to be consensual in nature, though at the stage of considering the plea of the appellant to extend benefit of bail, it is not feasible for this Court to arrive at any conclusion to give any definite finding as it is for the trial Court to do so on the basis of thorough assessment and evaluation of the evidence to be produced on record. The appellant is in custody since long. The investigation has since been completed. Trial is likely to take time. The question as to whether it was a case of consensual physical relationship between the parties or of

repeatedly committing rape upon a female, who belongs to scheduled caste, by the appellant is a debatable issue as the prosecutrix being aged about 27 years was mature and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act, she was consenting to. The relationship between the parties does not seem to have been working out but that cannot be considered to be a ground for lodging an FIR for offence under section 376(2)(n) of IPC. In this regard, reliance can be placed upon the observations made by Hon'ble Supreme Court in ***Ansaar Mohammad vs. State of Rajasthan and another : 2022(3) RCR (Criminal) 917***, wherein similar observations were made. Keeping in view the discussion as made above, I am of the considered opinion that the impugned order is liable to be set aside.

10. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is ordered to be released on bail subject to his furnishing personal as well as surety bonds to the satisfaction of the learned trial Court/Duty Magistrate and further subject to the condition that he would not try to intimidate or induce the witnesses during the trial of the case and shall not even visit in the vicinity of the area, where the prosecutrix resides.

11. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

28.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No