

2024:PHHC:071517



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRA-S-1184-2024 (O&M)
Date of decision: 21.05.2024

Rajesh Malik ...Appellant

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Yashpal Thakur, Advocate
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Gaurav Arora, 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 Atrocities) Act, 1989 (for short 'the SC/ST Act') by the appellant challenging the order dated 12.07.2023, passed by the learned Additional Sessions Judge, Karnal, whereby an application filed by him under Section 438 Cr.P.C. for grant of anticipatory bail in case arising out of FIR No. 172 dated 19.06.2023, registered under Section 365 of IPC (Sections 4, 12 of the POCSO Act,

Section 120-B of IPC and Sections 3(1)(w)(i) and Section 3(2)(va) of the SC/ST Act added later on) at Police Station Ram Nagar, District Karnal, had been dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are that on 19.06.2023, a written complaint was submitted by the complainant 'S' (*name withheld*) alleging therein that the victim 'L' (*name withheld*), who was her 15 years' old daughter, had gone to the market at around 06:00 PM on 18.06.2023 and did not return. After registration of case, investigation proceedings were initiated. The victim was recovered on 20.06.2023 and was sent to One Stop, Karnal. Her statement under Section 164 of Cr.P.C. was recorded, wherein she stated she had left her house on her own on being harassed by her sister. She went with a girl, who had taken her to Chandigarh and had called a boy, who arranged a hotel for her. She stated that the said boy was exerting pressure upon her. She refused to get her medical examination conducted. However, on the basis of her statement, offence under Section 365 of IPC was deleted and offences under Sections 4 and 12 of POCSO Act were added. Subsequently, offence under Section 18 of POCSO Act was added and offence under Section 12 of POCSO Act was deleted. The co-accused Muskan was arrested on 24.06.2023. On the basis of the disclosure statement suffered by her, the present appellant was nominated as an accused as she disclosed that it was him, who had got booked the room in a hotel at Zirakpur and had made attempt to commit wrong act with the victim. As the victim belonged to scheduled caste, therefore, during the course of investigation, offences under Sections 3(1)(w)(i) and Section 3(2)(va) of the SC/ST Act were also added later on. Apprehending his arrest, the appellant had filed an application for grant of

anticipatory bail, which had been dismissed by learned Additional Sessions Judge, Karnal, vide impugned order dated 12.07.2023.

3. The instant appeal has been filed by the appellant on the grounds and it has been argued by his counsel that the impugned order is not sustainable in the eyes of law as the appellant has been falsely implicated in this case. In fact, he knew the co-accused Muskan from the last one and a half year. On 19.06.2023, she had called him on his mobile and made a request to extend his help in providing job and one room at Zirakpur for a girl, who was her relative and had come for job. She also disclosed her age to be 19 years. On her request, he had assured helping the co-accused and at about 8-9 PM, he had gone with the co-accused for arranging some room in a hotel at Zirakpur. On reaching there, the co-accused had given her Aadhar Card at reception and the victim had reached thereafter. On making enquiry when he came to know that the victim was only 16-17 years' old only, he had refused to help her in providing any job and had left the room, while advising the co-accused to drop her at her parents' house. It is submitted that he had not made any attempt to commit any wrong act with the victim. He was not even named by her. The statement of the victim was tutored by the co-accused. It is submitted that even the complainant has come to know the truth and she has filed a complaint (Annexure P-5) before the Superintendent of Police, Karnal to get the statement of the victim recorded again to the effect that no wrong act has been done to her by the appellant. The complainant has even sworn an affidavit (Annexure P-6) in this regard. It is submitted that the custodial interrogation of the appellant is not required. No recovery is to be effected from. He is ready to join investigation. However, the Court of learned Additional Sessions Judge, Karnal did not take into

consideration all these facts and wrongly dismissed his bail application. 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. *Per contra*, learned State counsel has argued that there are serious allegations of making an attempt by the appellant to ravish the victim, who was a minor girl belonging to scheduled caste. The application for grant of pre-arrest bail as well as the instant appeal are not maintainable in view of the bar created under Section 18 of the SC/ST Act. The custodial interrogation of the appellant is must for thorough investigation in the matter. Therefore, it is argued that the appeal is liable to be dismissed.

5. The respondent No. 2/complainant has also been represented by her counsel, who has submitted that respondent No.2/complainant has no objection if the present appeal is allowed and also affirming the fact that affidavit (Annexure P-6) has been willingly sworn by the complainant and the application (Annexure P-5) has also been moved by her to the Superintendent of Police, Karnal.

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

6. As per allegations, as on 19.06.2023, the appellant in connivance with co-accused Muskan, had taken the victim to a hotel on the pretext of providing her a job and had made an attempt to ravish her. It is not in dispute that the victim is a member of scheduled caste. In her statement recorded under Section 164 of Cr.P.C., she has attributed specific allegation of being exerted force upon her by a boy, which had been admitted by her to be the present appellant. In her statement recorded under Section 164 of

Cr.P.C., the victim is specifically shown to have stated that a boy had been called by the co-accused in a hotel, who had molested her. Even in the affidavit (Annexure P-6), which is shown to be sworn by the mother of the victim, the fact that the present appellant had helped the co-accused in providing a room has not been denied and the similar pleas are shown to have been taken in the application (Annexure P-5), which is admittedly filed by the mother of the victim before the Superintendent of Police, Karnal. Meaning thereby that the facts that appellant along with co-accused Muskan had gone to a hotel at Zirakpur and the victim was also with them are shown to have been admitted by the complainant i.e. mother of the victim herself. The victim is a minor and Annexures P-5 and P-6 are obviously not the documents, which are signed or sworn by her. No veracity can be given to the contents of these documents at this stage. The allegations as levelled in the FIR against the appellant make out a *prima facie* case for commission of attempt to commit penetrative sexual assault upon the minor victim by the appellant.

7. So far as the maintainability of the application so moved by the appellant for grant of anticipatory bail is concerned, since the victim belongs to schedule caste, the allegations in the FIR also make out a *prima facie* case for commission of offences punishable under Sections 3(1)(w)(i) and Section 3(2)(va) of the SC/ST Act. Undoubtedly, despite the bar created under Section 18 of the SC/ST Act that the provisions of Section 438 Cr.P.C. are not applicable to the offences committed under this Act, this Court has extraordinary power to entertain a plea of an accused for grant of anticipatory bail even in a petition filed under Section 438 Cr.P.C. However, that power can be exercised, if it is revealed that no *prima facie* material

exists warranting arrest of the accused in the case. Reliance in this regard can be placed upon *Prathvi Raj Chauhan vs. Union of India and others*, **AIR 2020 SC 1036**, wherein the Apex Court considered the impact of Section 18-A of the SC/ST Act and held that as far as the provisions of Section 18-A and anticipatory bail are concerned, in case where no prima facie material exists warranting arrest in a complaint, the Court has inherent power to direct a pre-arrest bail. However, in the instant case, as discussed above, a *prima facie* case for commission of the aforementioned offences has been made out from the allegations in the FIR. As such, in my considered opinion, the provisions of Section 18 and 18-A of the SC/ST Act certainly apply to the present case. Therefore, anticipatory bail cannot be granted to the appellant. In this regard, reliance can be placed upon the judgment rendered by the High Court of Kerala in *Abbas R. V. vs. State of Kerala and others*, **2022 (5) KLT 618**, wherein similar observations have been made.

8. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C. Many useful information can be disinterred during custodial interrogation. It has also to be seen that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal cases by the trial

Court. It is also a matter of discretion to grant or not to grant pre-arrest bail.

9. In view of the discussion as made above, finding no ground to grant the concession of pre-arrest bail to the appellant, the present appeal is dismissed.

10. 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.

21.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

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