

213
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-893-2023 (O&M)
Date of decision: 07.05.2024

Kalu Ram
... Appellant

Vs.

State of Haryana and another
... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.K. Ganga, Advocate
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Adish Jain, Advocate for
Mr. Naresh Jain, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal has been preferred against the impugned order dated 14.03.2023 passed by learned Additional Sessions Judge, Sirsa, vide which second application for grant of regular bail to the appellant in FIR No.21 dated 28.01.2022 under Sections 323, 354-B, 376(2)(n), 451, 34, 506 of the Indian Penal Code, 1860 (for short 'IPC') and Section 3(1)(w) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC&ST Act'), registered at Police Station Odhan, District Sirsa, was dismissed.

2. The present FIR was registered on the complaint made by victim-prosecutrix on the allegations that on 21.11.2021, when she was sleeping in her house with her children, the appellant/her brother-in-law (*jeth*) entered the room and by putting his hand on her mouth, he committed rape upon her against her wishes. He also threatened to kill her son, if she raised a noise. Due to the fear, she did not disclose about the incident to anyone. On 23.11.2021, the appellant entered her house and threatened her that he made a video of her, while she was taking bath and if she made hue and cry, he would show the video to everyone and he again committed rape upon her. He also abused her by using caste related words. On 26.11.2021, she went to her parental house and did not disclose about the incident to anybody. When her husband came on parole for 42 days, she came to her matrimonial home. She was frightened and used to remain silent. When her husband asked her about the silence, on 25.01.2022, she disclosed about the whole incident to her husband. Thereafter, her husband ran towards the house of the appellant in anger, but he was not at home. On the same day i.e. 25.01.2022, her husband again visited the house of the appellant at about 08.30 p.m., where three persons were also present. When her husband asked the appellant about the incident, the appellant hit her husband on back side of his head with a brick and Rajpal son of Om Parkash, Rajender son of Badri Parsaid and Patel Godara son of Banwari Lal caught hold of her husband. When she reached there, head of her husband was bleeding. When she tried to rescue her husband, Patel Godara caught her neck and torn her clothes and appellant Kalu Ram hit her on her stomach and Patel Godara hit her on her

thumb with brick and abused her with caste related words. Thereafter, the prosecutrix along with her husband came to home. She called her mother and thereafter, her mother got them admitted in CHC, Odhan, from where she was referred to Govt. Hospital, Sirsa.

3. Learned counsel for the appellant, *inter alia*, contends that FIR (*supra*) was registered as a counter-blast to FIR No.17 dated 26.01.2022 lodged against husband of the complainant by the appellant. The prosecution version is not believable and there is an unexplained and inordinate delay in reporting the alleged incident occurred on 23.11.2021 and 26.11.2021. It is further contended that there is no medical evidence to corroborate the version of the complainant. Moreover, no offence under the provisions of SC&ST Act is made out. The appellant is in custody since 12.10.2022 and material witnesses including the prosecutrix-complainant have already been examined by learned trial Court.

4. Custody certificate dated 05.05.2024 of the appellant, filed in Court today, is taken on record.

5. *Per contra*, learned State counsel, assisted by learned counsel for respondent No.2-complainant, opposes the prayer made by the appellant on the ground that the appellant committed rape upon the complainant in the absence of her husband, when he was in judicial custody. It is contended that the delay in lodging the FIR No.21 (*supra*) was occurred, as the appellant threatened the complainant to kill her children and also to circulate her video and immediately when her husband came out of custody on parole, she narrated the entire incident to him. When husband of the complainant

confronted the appellant about the atrocities committed upon his wife-complainant, he was beaten up by the appellant and thereafter, FIR No.21 (*supra*) was registered. However, he could not controvert the fact that the appellant is not involved in any other case and he has already undergone the custody of 01 year, 06 months and 20 days as on 05.05.2024.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the appellant is behind bars since 12.10.2022 and the trial of the case has not even reached halfway mark, as only 01 i.e. the complainant-prosecutrix, out of 12 prosecution witnesses, has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the appellant in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

6. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the

mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. In view the above, present appeal is allowed and the impugned order dated 14.03.2023 passed by learned Additional Sessions Judge, Sirsa is set aside. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, appellant Kalu Ram is ordered to be released on regular bail during trial, on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by the observations of this Court.

07.05.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No