

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212

CRA-S-1397-2024

Date of Decision: 15.04.2024

Dharambir

.... Appellant

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Narender Kaajla, Advocate for the appellant.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Mr. Amit Nain, Advocate for the complainant.

NIDHI GUPTA, J. (ORAL)

The appellant has preferred the present appeal against the order dated 03.01.2024 passed by the learned Additional Sessions Judge, Hisar, dismissing the application filed by the appellant for grant of regular bail in case FIR No. 36 dated 08.06.2023 registered under Sections 376, 511, 450, 506 read with Section 34 IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Women Police Station, Hansi.

The aforesaid FIR was registered on the basis of complaint made by the victim herself and the brief facts of the case as mentioned in para 2 of the impugned order dated 03.01.2024 passed by the learned Additional Sessions Judge, Hisar, are reproduced as under:-

“The complainant got the present FIR registered with the allegations that her husband is a driver and usually remains outside from the house. She performed love marriage with

Monu caste Brahamin about six years ago. She herself belongs to Dhanak caste. Applicant Dharambir is her brother-in-law (Devar) in relation. In the intervening night of 5/6.06.2023 at about 02:30AM applicant came to her house in a car. He was accompanied by a woman namely Poonam and one boy namely Bunty. At that time Bunty was under the influence of liquor. Aforesaid Poonam and that boy stood outside her house and Dharambir came inside her house after jumping the wall of her house. At that time, her husband was not present in the house. She along with her two children was present in her house. Dharambir entered into her house and slept on the mattress where she along with her children was sleeping. He misbehaved with her and tried to commit rape upon her, on which she woke up. She made a noise. On hearing the noise, Dharambir became furious and started abusing her in filthy language. He also uttered casteist remarks. He also threatened to eliminate her as well as her husband, if she would report the matter to the police. Thereafter, Dharambir fled away from the spot. She followed him and came outside her house, then aforesaid Poonam Saini also gave her casteist abuses and asked Dharambir to kill her (complainant). The incident of accused trespassing in the house of complainant was recorded in CCTV camera. She requested to take legal action against the culprits.”

Learned counsel for the appellant, *inter alia*, submits that the alleged victim/complainant/respondent No. 2 herein is the ‘*Bhabi/sister-in-law*’ of the appellant. It is stated that at the time of occurrence the victim/respondent No. 2 herein was 32 years old married lady. The present FIR was registered due to some misunderstanding between the victim/complainant and the appellant. However, now the matter stands compromised and the victim/complainant/respondent No. 2 herein has duly sworn-in an affidavit dated 08.12.2023 (Annexure A-2) to this effect in favour of the appellant. Learned counsel has very fairly admitted that there are several other cases against the appellant as mentioned in para 8 (at pages No. 4 and 5) of the paper-book. However, the appellant was on bail in all those cases. The appellant has been in custody since 27.07.2023. The trial is likely to take a long time. No useful purpose will

be served by further detention of the appellant in custody. Thus, it is prayed that the appellant may be released on regular bail. In support of his contentions, learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court in ***Prabhakar Tewari vs. State of U.P. and another***, ***Law Finder Doc Id # 1670858***, wherein it has been held that allegation of grave and serious offence and pendency of several criminal cases against accused cannot be basis to refuse prayer of bail.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of regular bail to the appellant. It is submitted that there are serious and grave allegations against the appellant, inasmuch as, the appellant had attempted to rape the victim/complainant, therefore, the present FIR was lodged against him under Sections 376 and 511 IPC. Learned State counsel submits that custody certificate of the appellant is not available, however, he admits that the appellant has been in custody since 27.07.2023.

Mr. Amit Nain, Advocate has put in appearance on behalf of victim/complainant/respondent No. 2 herein and submits Vakalatnama which is taken on record. Learned counsel also admits that factum of compromise between the parties and has not disputed the submissions made by learned counsel for the appellant.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that the appellant has been in custody since 27.07.2023 and also the fact that the conclusion of trial will take considerable time and no useful purpose

would be served by further detention of the appellant, the present appeal is **allowed**.

The appellant-Dharambir S/o Bijender Sharma, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

15.04.2024
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(NIDHI GUPTA)
JUDGE

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