

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

244

CRA-S-1428-2024 (O&M)
Date of decision: 29.04.2024

Rattan ...Appellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Pradeep Duhan, Advocate
for the appellant.

Ms. Nidhi Garg, AAG, Haryana.

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 atrocity) Act, 1989 (*for short 'the SC/ST Act'*) by the appellant challenging the order dated 11.12.2023 passed by the learned Additional Sessions Judge-cum-Special Judge, Fast Track Court, Hisar (*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. 740 dated 25.09.2023, registered under Sections 323, 354, 354-A, 506 of IPC; Section 10 of the POCSO Act, 2012 and Section 3 of SC/ST Act at Police Station Azad Nagar, Hisar, had been dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are

that the aforementioned FIR was registered on the basis of a statement recorded by complainant 'R' (*name withheld*) on 25.09.2023 alleging therein that the victim 'S' (*name withheld*) who was her 12 years' old daughter and she was also having a 14 years' old son. Her husband was indulged in the vices of consuming drugs, due to which, there were frequent quarrels between them and due to that reason, she had left him about 08 years ago and from the year 2017, she had started living with the appellant in live-in-relationship. Her children were also residing with him and they used to address the appellant as their father. Even a female child was born out of the alliance of complainant and the appellant. She alleged that from past some time, the appellant had started misbehaving with her children and had also been exerting pressure upon her to leave the victim and her son with their real father and on her refusal to do so, he had started torturing her children as well as herself. She had even sent her children back to their real father on 31.08.2023 but since they did not like staying there, therefore, she had brought them back on 19.09.2023. She further alleged that on the same midnight, while she had woken up to go to washroom, she found the appellant while lifting the shirt of her daughter and sexually harassing her by inappropriately touching her. She at once raised protest but the appellant while proclaiming that he will make the victim her bride also extended threats to kill the complainant and her daughter. She alleged that her daughter then disclosed to her that the appellant had been doing such things to her from quite some time. On the basis of these allegations, aforementioned FIR was registered. Investigation proceedings were initiated. Offence under Section 3 of SC/ST Act was added later on during investigation. The appellant was arrested on 26.09.2023. 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. He had moved an application seeking grant of regular bail but the same had been dismissed by the trial Court, vide impugned order dated 11.12.2023.

3. The present appeal has been filed by the appellant on the grounds and it has been argued by his counsel that the impugned order dated 11.12.2023, whereby the third application filed by the appellant seeking regular bail had been dismissed by the trial Court, is liable to be set aside as while passing the same, the trial Court ignored the fact that there was delay of 06 days in lodging of FIR and the same had remained unexplained. In fact, the complainant had been living with him in live-in-relationship since 2017 and a deed to this effect was executed between them on 27.01.2021. However, she had subsequently sworn an affidavit on 28.03.2023 for cancelling such relationship with the appellant and thereafter had falsely implicated him in this case. His custodial interrogation is no more required. The trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. It is also argued that the ingredients for commission of offence punishable under Section 3 of the SC/ST Act have not been made out at all. With these broad submissions, it is argued that the present appeal deserves to be accepted and the appellant deserves to be given benefit of regular bail.

4. *Per contra*, learned State counsel has argued that there are serious allegations against the appellant. In her statement recorded under Section 164 Cr.P.C., the victim had made specific allegations as against the appellant of her daughter being sexually assaulted by him. The victim was

below the age of 12 years as on the date of occurrence i.e. 19.09.2023 and, therefore, offence committed by the appellant falls within the definition of aggravated sexual assault as defined in Section 9(m) of the POCSO Act, 2012. The victim is still to be examined. There are chances of the appellant's intimidating the witnesses, if extended benefit of bail. Hence, it is urged that the present appeal is liable to be dismissed.

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

6. The victim admittedly belongs to schedule caste community. As per allegations in the FIR, she was below the age of 12 years as on 19.09.2023, when she was sexually assaulted by the appellant, who was living in live-in-relationship with the mother of the victim. Investigation has since been completed. Challan has been presented in the Court. Charges against the appellant have been framed. Trial is likely to take time. There is delay of 06 days in reporting the matter to the police. There is no basis for the contention that the appellant may intimidate the witnesses or abscond, if extended benefit of bail. Keeping in view the nature of allegations as levelled against the appellant, the period of his incarceration, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the appellant deserves to be given benefit of regular bail.

7. Accordingly, the present appeal is allowed. The impugned order is set aside. The appellant is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

8. It is made clear that the appellant shall not influence/intimidate

or try to meet the victim/complainant and shall also not try to influence or intimidate any other witness of the case during trial. In case of violation of any of these conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

9. 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.

29.04.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No