

215+216

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CRA-S-1147-2023 (O&M)

Bhagwana @ Amit

.....Appellant

versus

State of Haryana

..... Respondent

2.

CRA-S-532-2024

Rajan

.....Appellant

versus

State of Haryana and another

..... Respondents

Date of Decision: 29.05.2024

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. M.N. Jajoria, Advocate for the appellant
in CRA-S-1147-2023.

Mr. Baljeet Nain, Advocate for the appellant
in CRA-S-532-2024.

Mr. Ashish Yadav, Addl. A.G., Haryana

RAJESH BHARDWAJ, J. (Oral)

This order shall dispose of abovesaid two appeals filed for grant of regular bail to the appellants in a case FIR No.171 dated 05.08.2019 under Sections 363, 376-D, 376(2)(n), 376(2)(f), 328, 344, 323, 120-B, 506 IPC and Section 3(i)(r), 3(i)(s) and 3(2)(v) of SC/ST Act, registered at Police Station Uchana, District Jind, Haryana.

Adumbrated facts of the case are that the FIR was registered on the statement made by father of the prosecutrix, wherein he alleged that his daughter (name concealed) aged about 19-20 years left the house on her own

wish in the night of 01.08.2019 between 11 to 2 o'clock. She had taken her Aadhar card, PAN card and Birth certificate along with her. They tried their best to trace her out, however, failed in tracing her out and hence, made a request to take the legal action against the culprits. On the basis of the same, FIR was registered and investigation commenced. During investigation, the prosecutrix was recovered on 23.10.2019 and was medico-legally examined and was produced before the Ld. Magistrate, Narwana, where her statement under Section 164 Cr.P.C. was recorded. The prosecutrix disclosed about the various accused wherein the appellants were also named. On the basis of the same, the appellants were also arrayed as an accused and they were arrested by the investigating agencies on 01.01.2020 and 05.11.2019, respectively. They approached the Court of Ld. Additional Sessions Judge, Jind for grant of bail, however, the same was declined by Ld. Additional Sessions Judge, Jind, vide order dated 15.04.2021 and 10.10.2023, respectively. Aggrieved by the same, the appellant-Bhagwana @ Amit approached this Court for grant of bail by way of filing of CRM-M-37506-2021 and same was dismissed as withdrawn on 31.08.2022. Hence, both the appellants are before this Court by way of filing the present appeal.

It has been contended by counsel for the appellants that appellants have been falsely implicated in the present case. He submits that admittedly the prosecutrix is major and she went missing on her own and she left her home with her own wish on 01.08.2019 and thereafter she was recovered after more than 2 months i.e. on 23.10.2019. During this period, the prosecutrix married one co-accused, namely, Salender @ Surender. She submits that the prosecutrix had been travelling throughout this period from one place to another but there is nothing on record to show that she ever resisted any action of the accused. She submits that on perusal of the 164 Cr.P.C. statement, it is apparent that the prosecutrix had been travelling on a

motorcycle as well in the public places and thus, it is apparent that it was at the most, a case of consent. She submits that once there is a consent of the prosecutrix, the offence under Section 376 IPC would not be attracted. She has submitted that the appellants have no criminal antecedents as they have never been involved in any criminal case except the present case. She submits that even otherwise, the appellants are behind bars from last more than 04 years and till date the trial has not been concluded. She has submitted that the fundamental rights of the appellants for a speedy trial is totally defeated. She submits that ocular version of the prosecutrix is not medically corroborated. She submits that in the facts and circumstances of the present case, appellants deserve to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the appellant. He has submitted that on recovery, the prosecutrix was produced before the Ld. Magistrate, Narwana and her statement under Section 164 Cr.P.C. was recorded. From the perusal of the statement, there are specific allegations against the appellants and co-accused of committing rape with the prosecutrix. He submits that in all there are 07 accused out of which 05 accused have been arrested and 01 of the accused has been declared Proclaimed Offender and another one is yet to be arrested. He submits that out of 26 prosecution witnesses, 20 witnesses have been examined and the next date before the trial Court is 29.05.2024 i.e. today. He submits that in the facts and circumstances, the appellants do not deserve the concession of regular bail.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the prosecutrix is major. She left home on her own wish as per the statement made by her father on 01.08.2019 and thereafter, she was recovered on 23.10.2019. During this period, as per the statement of

the prosecutrix, she remained at various places and throughout she was travelling by public transport as well. The prosecutrix is married with one of the co-accused, namely, Salender @ Surrender. The custody certificate produced by the State counsel would show that the appellant-Bhagwana @ Amit is behind bars from last 04 years, 03 months and 24 days and appellant-Rajan from last 04 years, 06 months and 06 days as under trial prisoners upto 25.04.2024 and 11.05.2024, respectively. It further reveals that the appellants have no criminal antecedents. Needless to say that despite the long custody of the appellants, the trial has not yet been concluded. Till date out of 26 prosecution witnesses, 20 witnesses have been examined and the trial remains to be completed.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and circumstances of the case, this Court is of the opinion that learned counsel for the appellant succeeds in making out a case for grant of regular bail. Accordingly, the present appeals are allowed and the appellants are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

29.05.2024
ps-I

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

:

Yes/No
Yes/No