

2024:PHHC:074743



243

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1579-2024 (O&M)
Date of decision: 24.05.2024

Manjeet...Appellant

Versus

State of Haryana and others...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Yashveer Kharb, Advocate
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Mandeep Singh Kundu, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. CRM-22790-2024

Allowed as prayed for, subject to all just exceptions.

2. CRM-22791-2024

Allowed as prayed for, subject to all just exceptions.

Reply, filed on behalf of respondent No. 2, is taken on record.

3. CRA-S-1579-2024 (O&M)

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 09.04.2024, passed by the learned Additional Sessions Judge, Panipat,

whereby an application filed by him under Section 438 Cr.P.C. for grant of anticipatory bail in case arising out of FIR No. 48 dated 15.02.2024, registered under Sections 376, 385, 506 of IPC; Section 67-A of the Information Technology Act and Section 3(2)(va) of the SC/ST Act at Police Station Israna, District Panipat, had been dismissed.

4. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR had been lodged on the basis of a written complaint filed by the complainant 'S' (name withheld) alleging therein that she came in contact with the appellant in October, 2023 at a Honda agency. On 18.10.2023, the appellant called her to Murthal Haveli Hotel on the pretext of some work. On reaching there, he took her to a room and forcibly committed rape upon her. He took her objectionable pictures and videos and thereafter started blackmailing her and exploiting her by extending threats to make her pictures and videos viral. He had extracted an amount of about Rs. 1 Lakh from her and when she refused to give any more money to him, then he made her pictures and videos viral, which were also sent on her own phone. She alleged that the appellant had been extending threats to kill her and was proclaiming that she could not do any harm to him and had also been insulting her in the name of her caste by addressing her as "*sali chamari tu to kamini hai, tere se mera kuchh nahi bigadne wala, jo tere se bane kar lena*". After registration of FIR, the investigation proceedings were initiated. The victim refused to get her medical examination conducted. Her statement under Section 164 of Cr.P.C. was also recorded. The investigation is underway. The appellant had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Panipat, which had been dismissed, vide impugned order, by observing that

the victim being belonging to the scheduled caste community and the allegations making out a case for commission of offence under the provisions of SC/ST Act as well, the application for grant of pre-arrest bail was not maintainable and also by observing that no extraordinary circumstance for grant of anticipatory bail had been made out. Feeling aggrieved, the present appeal has been filed by the appellant.

5. Learned counsel for the appellant has argued that the impugned order is not sustainable in the eyes of law as while passing the same, learned Additional Sessions Judge, Panipat ignored the fact that the victim was a married female having two children and was living separately from her husband. She had maintained consensual relationship with the appellant with an intention to grab money from him. There was inordinate and unexplained delay of 03 months in lodging of the FIR. The victim had refused her medico-legal examination by herself. There were photographs to show that the victim was willingly involved in / sexual acts with the appellant. It is not him, who had disseminated their personal photographs or made them viral. His custodial interrogation is not required. He is ready to join the investigation. The provisions of Section 3(2)(va) of the SC/ST Act were not attracted as no case either for commission of offence of rape or any case under Section 385 of IPC had been made out. The offence punishable under Section 67-A of the Information Technology Act was triable by the Magistrate. No recovery is to be effected from him. 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.

6. Reply has been filed on behalf of respondent No.2/complainant, as per which, the appeal is not maintainable as the bar under Section 18 of

the SC/ST Act was applicable to the peculiar facts of the present case, which made out a prima facie case for commission of offence punishable under Section 3(2)(va) of SC/ST Act. There was ample material on record to show that the appellant had ravished the victim; took her objectionable pictures; made videos of the act and had been blackmailing her by extending threats to make her pictures and videos viral and had extracted a sum of more than Rs. 1 Lakh from her. Some of these pictures were disseminated on the mobile phone of the victim herself. The custodial interrogation of the appellant is required for thorough investigation of the matter as well as for recovery of the cell phone through which he had been disseminating objectionable material. The fact that respondent No. 2 was married and separated from her husband, did not amount to giving any right to the appellant to ravish her and to blackmail her. The allegations against him are serious in nature and, therefore, it is argued by learned State counsel, assisted by learned counsel for respondent No. 2/complainant, that the appeal is devoid of any merit and is liable to be dismissed.

7. As per the allegations in the FIR, the appellant had been in contact with the respondent No. 2/victim since October, 2023 and on 18.10.2023, he had taken her to a hotel at Israna, District Panipat and had committed rape upon her after taking her to a room and after making her consume water, on drinking which, the victim had started feeling dizziness. He is alleged to have clicked her objectionable pictures and captured videos and is further alleged to have started blackmailing her by extending threats to make those pictures and videos viral and is further alleged to have extracted an amount of Rs. 1 Lakh from her. As per further allegations, he had insulted the victim by making caste related remarks to her.

8. The case as set up by the appellant on the other hand is that in fact, it was purely a case of consensual physical relationship between two adult persons as the victim was already married and had been living separately from her husband. As per the appellant, provisions of Section 375 of IPC have not been attracted and the arguments as raised by learned counsel for the appellant are that the provisions of Section 3(2)(va) of the SC/ST Act are also not applicable to the peculiar facts of the present case. Copies of some Whatsapp chat records and certain photographs showing the appellant and the victim in intimate positions have been placed on record. The question of admissibility of these pictures and Whatsapp chat has to be considered by the trial Court on the basis of the evidence to be produced before it during trial and this Court, while deciding this appeal, whereby the order of denial of pre-arrest bail by the Court of learned Additional Sessions Judge, Panipat, has been challenged, is not required to go into that question. Neither it is feasible nor appropriate for this Court to do so. There are specific allegations against the appellant that he repeatedly ravished the victim who belonged to the scheduled caste and had been blackmailing her, financially exploiting her and criminally intimidating her. He is also alleged to have disseminated their intimate photographs. He is also alleged to have made caste related and insulting remarks as against the victim. The allegations against the appellant as such are serious in nature.

9. So far as the maintainability of the application so moved by the appellant for grant of anticipatory bail is concerned, the victim belongs to schedule caste. The allegations in the FIR also make out a prima facie case for commission of offences punishable under 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 would certainly apply to the present case. Therefore, anticipatory bail cannot be granted to the appellant. In this regard, also reliance can also be placed upon the judgment rendered by the Hon'ble Apex Court in ***Dr. Subhash Kashinath Mahajan v. State of Maharashtra and Another (2018) 6 SCC 454***, wherein similar observations have been made.

10. More so, 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.

11. In view of the discussion as made above, it is held that the impugned order warrants no interference as the prayer made by the appellant for grant of pre-arrest bail cannot be accepted in view of bar created under Section 18 of SC/ST Act and on the ground of maintainability and even otherwise. Accordingly, the appeal is dismissed.

12. 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.

24.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes