

2024:PHHC:066934



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1627-2024 (O&M)
Date of decision: 15.05.2024

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Jagmohan Singh ...Appellant

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Arshdeep Singh Brar, Advocate
for the appellant.

Mr. A. S. Samra, AAG, Punjab.

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 Atrocities) Act, 1989 (*for short 'the SC/ST Act'*) by the appellant challenging the order dated 06.04.2024 passed by the learned Additional Sessions Judge, Moga in Bail Application No. 575 of 2024 filed by the appellant/accused in case arising out of FIR No.74 dated 01.05.2023, registered under Sections 376 and 506 of IPC read with Sections 3(2)(v) of the SC/ST Act at Police Station Baghapurana, District Moga, whereby the said bail application of the appellants for grant of regular bail had been dismissed.
2. Brief facts of the case relevant for the purpose of disposal of

this appeal are that the aforementioned FIR had been registered on the basis of statement recorded by the victim “H” (name withheld) on 01.05.2023 alleging that she got married with one Jaspreet Singh about 5 years back and had been living at her parental house presently. She alleged that the appellant was on visiting terms with her family from the last about 10 years and used to visit her parental home frequently. He kept an evil eye upon her. He had induced her to enter into physical relationship with him by saying that as both of them were married, therefore, no one would suspect them. She had become pregnant and a female child was born to her out of the loins of the petitioner about 10 months back. From some time, the petitioner had started avoiding her on one pretext or the other and had even stopped responding to her calls. She further alleged that on 28.04.2023, the petitioner had taken her to Baghapurana area and had forcibly committed rape upon her and had thereafter, threatened to kill her. Investigation proceedings were commenced. The petitioner was arrested and presently he is facing trial for commission of aforementioned offences. He had earlier filed an appeal before this Court, bearing number **CRA-S-2699-2023**, challenging the order dated 04.08.2023 passed by the trial Court, whereby his first application for grant of regular bail as filed before the trial Court had been dismissed. However, the said appeal was dismissed by this Court by observing that there were specific allegations against the appellant and the statement of the victim was yet to be recorded, vide order dated 15.11.2023 (Annexure A-4). Subsequently, since the sworn deposition of the victim had been recorded before the trial Court on 31.10.2024, the appellant had again moved an application before the trial Court seeking grant of regular bail but the same had been dismissed, vide impugned order dated 06.04.2024. Hence, the

present appeal.

3. It is argued by learned counsel for the appellant that the impugned order dated 06.04.2024, whereby the second application for grant of regular bail as filed by the appellant had been dismissed, is not sustainable in the eyes of law, keeping in view the fact that while passing the same, the trial Court ignored the fact that the victim had since been examined before it and her statement on the face of the record did not prove that the appellant had committed rape upon her at any point of time. Rather, her statement fully establishes that it was a case of consensual relationship between the parties. The prosecutrix admitted her being married to Jaspreet Singh and Kulwinder Singh previously and that she had not obtained any divorce from either of her two previous husbands and, therefore, it did not lie in her mouth to say that any promise to marry her had been made by the appellant and he had ravished her on that pretext.

4. It is further argued that the appellant is in custody for the last about one year. The trial is likely to take time. There is no question of his intimidating the prosecutrix as she already stands examined. The prosecutrix has materially improved her version in her sworn deposition, which is also self contradictory on important points and cannot be acted and relied upon and if the same is read in whole, it did not make out any case for commission of offence of rape upon the prosecutrix by the appellant. The FIR in this case has been lodged against him since the relations between the prosecutrix and himself had gone awry.

5. Learned counsel for the appellant has further argued that the circumstances have changed from the date when the first application for grant of regular bail of the appellant had been dismissed by the trial Court

and the appeal against the said order of the trial Court had been affirmed by this Court, because now the prosecutrix stands examined and it is the second application for grant of regular bail as filed by the appellant, which has been dismissed. With these broad submissions, it is argued that the impugned order is liable to be set aside; the appeal deserves to be accepted and the appellant deserves to be extended benefit of regular bail (*wrongly mentioned as anticipatory bail in the prayer clause of the appeal*).

6. *Per contra*, learned State counsel has argued that there are serious and specific allegations against the appellant. His previous application for grant of bail had been dismissed by the trial Court and the appeal against the said order had been dismissed by this Court, vide order dated 15.11.2023 passed in **CRA-S-2699-2023**. No such new ground had been made out, which entitles the appellant to be given benefit of regular bail. It is further argued that the prosecutrix has been consistent in her allegations, has supported the same in her statement recorded under Section 164 of Cr.P.C. before the Sub Divisional Judicial Magistrate, Baghapurana as well as in her sworn deposition and the guilt of the appellant is evident from the same. It is also argued that there is nothing on record to show that there would be any undue delay in conclusion of trial. Further submissions as made by him are that the appellant has been chargesheeted under Section 376 of IPC and the presumption under Section 114-A of the Evidence Act would apply and the Court must, therefore, presume that the prosecutrix did not give consent to the sexual acts committed upon her by the appellant. Hence, it is urged that the present appeal is liable to be dismissed.

7. I have given my thoughtful consideration to the contentions raised by both the sides.

8. Though, at the stage of considering a plea for grant of bail, it is not proper and feasible for the Court to draw any conclusion much less to return any finding as to the nature of relationship between the parties because such decision must await a thorough assessment and evaluation of the evidence led by the parties at trial. However, since in this case, the sworn deposition of the prosecutrix has also been recorded and a copy thereof has been placed on record, therefore, her testimony has been perused in the context of allegations levelled in the FIR and statement recorded under Section 164 of Cr.P.C. It emerges therefrom that admittedly and evidently, the prosecutrix was an adult female having two children. As per her own admission, before entering into relationship with the present petitioner, she had performed two marriages, one with Kulwinder Singh and second with Jaspreet Singh and no decree of divorce had been obtained by her from either of her two husbands. Further, it is not the allegation in the FIR that she had been induced by the petitioner to enter into sexual relationship with her by giving any promise to marry. Rather, as per the allegations in the FIR itself, the petitioner had offered her to have physical relations with him on the ground that since both of them were married, therefore, nobody would be having any suspicion on them. She is even shown to have given birth to a female child out of the alliance of the petitioner. As such a debatable question arises as to whether it is in fact a case of commission of rape as defined under Section 375 of IPC or a case of consensual relationship and, therefore, the applicability of the provisions of Section 3(2)(va) of SC/ST Act is also in debate, which has to be decided by the trial Court on the basis of the evidence produced before it on record. Upon a conspectus of the discussion as made above, this Court is persuaded to hold that the appellant

deserves to be admitted to bail pending trial.

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

10. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

15.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *Yes*