

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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2024:PHHC:033368
CRA-S-1604-2023 (O&M)
Date of decision: March 7th, 2024

Parveen
.....Appellant

Versus

State of Haryana
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Pawan Kumar Hooda, Advocate
for the applicant-appellant.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Mr. R.K. Hooda, Advocate
for Mr. Kamal Mor, Advocate
for respondents No.2 and 3.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-24841-2023

Prayer in this application is for condonation of delay of 38 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed.

Delay of 38 days in filing the appeal stands condoned.

CRA-S-1604-2023

The appellant is impugning the order dated 17.02.2023 passed by learned Additional Sessions Judge, Sonipat, whereby his application under Section 439 Cr.P.C. for grant of bail in case FIR No.499 dated 16.09.2022 under Sections 201, 307, 377 of the Indian Penal Code, 1860 and Section 3 of the SC & ST Act, registered at Police Station Sadar Gohana, District Sonipat, has been dismissed.

2. Learned counsel for the appellant, *inter alia*, contends that the false implication of the appellant in the crime in question is evident from the fact that the victim while stepping into the witness box had not supported the case of the prosecution, as a result of which he was declared hostile. In support, he has placed on record certified copy of the deposition of victim PW-1 Shansha @ Ajay. Learned counsel has submitted that the sole material witness in the case in hand i.e. the victim stands examined. He submits that 29 prosecution witnesses still remain to be examined. It has thus been prayed that since the appellant has now been in custody since 17.09.2022, his further incarceration would serve no useful purpose.

3. Learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions, has not disputed the factum of the victim having been declared hostile during trial on account of him not supporting the case of the prosecution. Learned counsel has also conceded that as many as 29 prosecution witnesses still remain to be examined.

4. I have heard learned counsel for the parties and perused the material placed on record.

5. Before proceeding further, it would be apposite to reproduce the relevant part of the FIR, which reads as under:-

“To, SHO Saheb, Gohana. Sir, it Station Police is Rishikesh S/o Ramkuwar, requested Sadar that I is resident of Guga Heddi, District Rohtak. And I do the work of making concrete drains of the canal. I also do work the of contract. That I had taken the contract of making the drain, near the Lath Jolly canal. Ajay S/o

Mangalsain, Jeevan S/o Omprakash, Naveen S/O Sheeshpal, Sunny S/o Prakash, Sunny S/o Sanjay, Rohit S/o Balraj, Mukesh S/o Balraj of my village also work with me as a laborer. There is two storey house (Kothda) of Parveen S/o Surender resident of Lath district Sonipat near the canal, in which all of us live. On 15.9.2022 Parveen S/o Surender resident of Lath and Ajay S/o Mangalsain, Jeevan resident of S/o Omprakash Gugahedi were drinking alcohol till about 11.30 pm while sitting in a room of shutter beside the house (Kothda), they were drinking alcohol for a long time. That in front of us, Jeevan son of Omprakash had been slept on the cot lying outside in the full intoxication of the alcohol. Me and Naveen, Sunny, Rohit, Sunny, Mukesh were also sleeping in their room. Both the rooms are adjacent to each-other. At night around 1.00 AM, suddenly I woke up from sleep after hearing the sound of cry of Ajay. I also woke up all my friends as well, when we got up and saw, Ajay was laying on the mattress laying in side room, which seems to be in a state of unconsciousness. It could be seen that there was a lot of blood near the anus on the back side of Ajay. Ajay's pants were unbuttoned. There were also traces of blood was seen on hands and also near the pants Parveen. Jeevan was in a drunken state. He was sleeping outside in. It seemed that a wrongful act has been done with the Ajay in an unnatural way in the anus. This wrongful act has been done by Parveen son Surender, resident of Lath. Then we called on 112 for help, then the police came on the spot, they helped us and took Ajay to the government hospital, Gohana, then we came. The condition of Ajay BPS Khanpur is critical. Legal action should be taken against Parveen. Sd/- Rishi Kesh 9350129614."

6. The appellant has been in custody since 17.09.2022. Concededly the sole material witness not only stands examined but has also been declared hostile during trial.

7. In the facts and circumstances as enumerated hereinabove, further incarceration of the appellant would serve no useful purpose. Accordingly, the instant appeal is allowed. The appellant be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

March 7th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No