

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

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Criminal Appeal S-1609-2023

Date of decision :-02.04.2024

Shailesh Kumar @ Amit Thakur

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Yogeshwar Dayal Kaushik, Advocate
for the appellant.

Mr. Surinder Kumar Dagar, DAG, Haryana
assisted by SI Sunita.

NIDHI GUPTA J. (Oral)

Prayer in this appeal is for setting aside the order dated 10.5.2023 passed by the Additional Sessions Judge, Faridabad, whereby anticipatory bail application of the appellant in case FIR No.23 dated 28.2.2023, under Sections 376(2)(n), 450 and 506 IPC and Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Women Police Station, Ballabgarh, District Faridabad, has been dismissed.

On 31.5.2023, co-ordinate Bench of this Court had passed the following order :-

“This is an appeal for setting aside the order dated 10.5.2023 passed by the Additional Sessions Judge, Faridabad, whereby anticipatory bail application of the appellant in case FIR No.23 dated 28.2.2023 under Sections 376 (2)(n), 450

and 506 IPC and Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Women Police Station, Ballabgarh, District Faridabad, has been dismissed.

Learned counsel for the appellant contends that offences under Section 3 of the SC/ST Act are not even prima facie made out against the appellant, as there is no allegation against him of abusing or insulting the prosecutrix by her caste name. It is further submitted that other allegations pertaining to the offence of rape are also not made out against him as relationship between the appellant and the prosecutrix was consensual. She has herself alleged that the two were in physical relationship from 18.11.2022 to 5.2.2023. They were tenants in the same house. It cannot be believed that the physical relations were developed by the appellant on the pretext of marriage since the prosecutrix is already married having two children, though her husband is missing from some time.

Notice of motion.

Ms. Mahima Yashpal, DAG, Haryana, accepts notice on behalf of the respondent/State. Adjourned to 17.10.2023.

Notice be issued to respondent no.2 for the date fixed.

In the meanwhile, arrest of the appellant shall remain stayed. He is also directed to join the investigation as and when called upon to do so by the investigating officer.”

Learned State counsel, on instructions from SI Sunita submits that though as per written instructions, the appellant has not

joined the investigation but on oral instructions from SI Sunita, the Investigating Officer, the appellant has joined the investigation and is co-operating in all manner. The Investigating Officer submits that due to inadvertent error, the fact regarding joining of the investigation has been written in the record form as “not joined the investigation”. Learned State counsel, on instructions, confirms the fact that the appellant has joined the investigation.

In view of the above, the order dated 31.5.2023, whereby arrest of the appellant was stayed, is made absolute, however, the appellant is directed to appear before the SHO/Investigating Officer and in the event of his arrest, he shall be released on bail on his furnishing bail bonds to the satisfaction of SHO/Investigating Agency subject to the following conditions as envisaged under Section 438(2) Cr.P.C.:-

- i) the appellant shall make himself available for interrogation before the Investigating Officer as and when required;
- ii) the appellant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- iii) the appellant shall not leave the country, without prior permission of the Court and shall surrender his passport, if any.

He shall also join the investigation and cooperate with the investigating agency in case he is required for the same in future as and when called upon to do so.

In case at any given point of time hereinafter, it is felt by the investigating agency that the appellant is required for the investigation but is not cooperating, they will be at liberty to approach this Court for passing appropriate orders.

The appeal stands disposed of.

April 02, 2024
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No