



CRA-S-2392 of 2024 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220 CRA-S-2392 of 2024 (O&M)
DATE OF DECISION :- 12.11.2024

Ishwar Singh ...Appellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Rohit Choudhary, Advocate for the appellant.

Ms. Priyanka Sadar, AAG, Haryana.

None for respondent No. 2.

SUMEET GOEL, J. (Oral)

1. Present appeal has been filed under Section 14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order dated 12.01.2024 passed by the learned Additional Sessions Judge, Fast Track Special Court, Faridabad for grant of regular bail in FIR No. 246 dated 28.09.2020, registered for the offences punishable under Sections 363, 376-D, 120-B, 506 IPC, Section 6/8 of Protection of Children from Sexual Offences Act, 2012 and Sections 3/33/89 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Old Faridabad, District Faridabad.

2. The case set up in the FIR in question (as set out in the present petition by the appellant) is as follows:-

“To, SHO Sahib, Police Station Old Faridabad. It is requested that I am Dharamwati W/o Late Mahender R/o Village Fatehpur Billoch, Faridabd at present resident of Omi Doctor Baselwa Colony. I have five children comprising a son and 4 daughters. My youngest daughter namely Tarana aged 15 years

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has left the house on 25.09.2020 without disclosing anything, to whom, we have searched a lot as on today but no whereabouts of my daughter Tarana have been traced out. Now I have come to police station for reporting the matter. Register my FIR and search my daughter, whose particulars are like this, color wheatish, long face, slim body wearing top having black and white strips, black pant, golden color Chunri, chappels. Applicant Dharamwati, M.No.7838278406.”

3. Learned counsel for the appellant has argued that the appellant is in custody since 19.01.2022. Learned counsel for the appellant has further argued that the appellant has been falsely implicated into the FIR in question. Learned counsel for the appellant has further iterated that there was dispute between the appellant and the victim (who are brother and sister) on the account of appellant stopping the victim from talking to boys. Learned counsel for the appellant has further argued that the challan in the case in hand was presented on 11.05.2022 qua the appellant wherein 23 prosecution witnesses have been cited but despite lapse of a period of about 2 ½ years only 03 witnesses have been examined till date. Learned counsel for the appellant has further iterated that two accused namely Asha and Ravinderpal Singh have been granted the concession of regular bail vide order dated 15.11.2022 passed by this Court in CRM-M-28809 of 2022. In this view of the matter, learned counsel for the appellant has prayed for grant of regular bail.

4. Counsel for the State opposed the present petition arguing that the allegations raised are serious in nature and thus the appellant does not deserve the concession of regular bail.

5. I have heard counsel for the parties and have gone through the available records of the case.



6. The appellant was arrested on 19.01.2022. After completion of investigation, the challan was presented on 11.05.2022. It is not in dispute that out of total 23 cited prosecution witnesses only 03 have been examined till date. The rival contentions of learned counsel for the parties; as to whether the appellant has been falsely implicated into the FIR in question on account of their being a dispute between the appellant and the victim for the reason of the appellant stopping the victim from talking to different boys; shall be gone during the course of trial. It is further not in dispute that the testimony of the victim stands recorded and there is thus no chance of the appellant interfering with the substantial prosecution evidence. Further, a perusal of the zimni orders dated 18.07.2023, 17.02.2024, 30.05.2024 as also 18.09.2024 shows that prosecution witnesses are not repeatedly turning up for having their testimonies recorded and the procrastination in the trial cannot be attributed to the appellant in any manner whatsoever. In this regard, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in a case of '**Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another**' decided in **Criminal Appeal No.2787 of 2024 arising out of SLP (Crl) No.3809 of 2024**', relevant whereof reads as under:-

"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused;



not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly. howsoever stringent the penal law may be. 21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

This Court does not deem it appropriate to delve into these rival contentions at this stage lest it may prejudice trial. No tangible material has been brought on record to show that there is likelihood of the appellant absconding from the process of justice or interfering with the prosecution evidence. As per the custody certificate dated 02.08.2024 filed by the State counsel, the appellant has suffered incarceration for a period of 02 years 06 months and 14 days. The appellant has, indubitably, undergone 03 further months of incarceration. In this manner, the total period of incarceration already suffered by the appellant is more than 02 years and 09 months. The appellant is not not shown to be involved in any other case. In the considered opinion of this Court, further detention of the appellant as an under trial is not warranted.

7. In view of the factual matrix of the present case, the instant appeal is allowed. Appellant is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the appellant shall remain bound by the following conditions:-

- (i) The appellant shall not mis-use the liberty granted.



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- (ii) The appellant shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The appellant shall not absent himself on any date before the trial.
- (iv) The appellant shall not commit any offence while on bail.
- (v) The appellant shall deposit his passport, if any, with the trial Court.
- (vi) The appellant shall give his cell-phone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaq Magistrate.
- (vii) The appellant shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the appellant.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

12.11.2024
P.Singh

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No