

CRA-S-2267-2024 (O&M)
Date of Decision: 12.07.2024

.....APPELLANT

Vs.

.....RESPONDENTS

Present:- Mr. S.S. Sahu, Advocate,
for the appellant.

Mr. Amrik Singh Narwal, D.A.G. Haryana.

Ms. Shelja Sharma, Advocate,
for respondent No. 2.

HARPREET KAUR JEEWAN J.

1. The present appeal has been filed by the appellant assailing the order dated 11.01.2024, passed by the learned Additional Sessions Judge, Fast Track, Special Court, Sirsa, whereby the bail application filed under Section 438 of the Code of Criminal Procedure, 1973 (for short '*the Code*') for grant of anticipatory bail to the appellant in FIR No. 464, dated 02.11.2023, under Sections 354, 354-A, 376 (2) (n), 377 and 506 of the IPC and Section 3(1) (w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989, (for short '*the Act of 1989*'), registered at Police Station Sadar, District Sirsa, has been dismissed.

2. The appellant had earlier filed an appeal assailing the same order which was dismissed by this Court, vide order dated 12.02.2024 in CRA-S-320-2024 (Annexure P-5). Learned counsel for the appellant *inter alia*



contends that after passing of the said order, the matter has been compromised between the parties. The appellant and respondent No. 2 are living in a live-in relationship. Due to differences between the parties, respondent No. 2 got registered the FIR. Now respondent No. 2 is not interested to pursue with the present case and a compromise deed, dated 08.05.2024 (Annexure P-3) has been executed between the parties and respondent No. 2 has also executed an affidavit, dated 11.06.2024 (Annexure P-4).

3. Learned counsel for the State has opposed the present appeal on the ground of gravity of allegations against the appellant. He has informed that the appellant is an employee of the police and he is already married.

4. I have considered the aforesaid contentions and perused the paper-book.

5. By passing a detailed order dated 12.02.2024 (Annexure P-5), the first appeal was dismissed after recording the contentions on behalf of the appellant, as well as contentions on behalf of the complainant. Sh. Sushil Kumar Verma, counsel for the complainant was appeared on behalf of respondent No. 2-complainant and opposed the appeal by raising the following contentions:-

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“Learned counsel for respondent No. 2-complainant has opposed the present appeal, on the ground that the appellant is a police officer. He is constantly harassing and sexually abusing the prosecutrix. The acquaintances of the appellant are threatening the prosecutrix of involving her husband in a false case of drug smuggling.”



XXXX XXXX XXXX XXXX

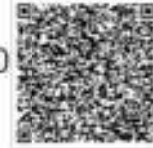
6. The following detailed reasons were recorded while dismissing the appeal filed on behalf of the appellant:-

XXXX XXXX XXXX XXXX

“5. I have considered the aforesaid contentions.

6. The Additional Sessions Judge, Sirsa, has dismissed the bail application of the appellant by observing that the appellant has repeatedly committed rape upon the prosecutrix several times while extending threats to defame her in the society and to spoil all the matrimonial ties with her husband. It was further observed that in view of the provisions of Section 18 of the SC/ST Act, the anticipatory bail is not maintainable as provision of Section 438 Cr.P.C. is not applicable to the present case. The investigation is still going on and custodial interrogation of the appellant is required.

7. As per the prosecution case, the appellant is the maternal uncle in a distant relation of the prosecutrix. He was on visiting terms at the paternal house of the prosecutrix and used to talk to her. He started doing obscene acts which were objected to by the prosecutrix but she was intimidated by the appellant to defame her in the family of her in-laws. The appellant even started visiting her in-law’s house at Sirsa. In April 2021, the appellant committed rape with the prosecutrix when she was alone in her house, he threatened to implicate her husband in heroin smuggling. The prosecutrix did not disclose anything due to fear. Again on 01.11.2023, the prosecutrix was fasting on the occasion of Karvachauth, when the appellant started



calling her repeatedly. At about 8:00 PM, he came to the house of the prosecutrix and took her along with him in his car and committed rape upon her in the car and thereafter, kept on roaming along with her for a long time in the car Ultimately, after about 11:00 PM, he dropped the prosecutrix home. The prosecutrix narrated the entire incident to her husband who took her to Civil Hospital, Sirsa where her medical examination was conducted.

8. It is not disputed that 05 months prior to the occurrence, the prosecutrix got registered FIR No.15 dated 26.05.2023 against the appellant. Even at that point of time, she had gone to the Police Station along with her husband for lodging the report with the allegations that the appellant was a police official and he came in contact with the prosecutrix in connection with the case which was filed by the appellant at District Sirsa and the appellant told the prosecutrix to provide her help being a police employee and also to consult an Advocate. In the said case, there are allegations that the appellant consulted an Advocate for fixation of fee of the counsel and he took money in cash. There are also allegations against the appellant that he had forcibly raped the prosecutrix and when she became pregnant, the appellant gave her some medicine alleging that it is an energy medicine but due to that, the prosecutrix suffered a miscarriage. The affidavit of the prosecutrix (Annexure P-7) has been relied upon while preparing a cancellation report by the Police.

9. The present FIR has been registered after about 05 months of the registration of the first FIR against the appellant. Again, there are allegations of sexual abuse of the prosecutrix. The prosecutrix has



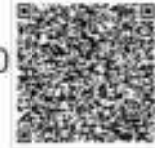
supported her version in the statement recorded under Section 164 Cr.P.C. on 03.11.2023 recorded by the Chief Judicial Magistrate, Sirsa (Annexure R-2).

10. As per the status report, human semen was detected from the samples of the prosecutrix. Learned State counsel has further alleged that during investigation, on 30.12.2023, the appellant did not appear before the Judicial Magistrate First Class, Sirsa for giving the statement for his consent to give DNA sample.

11. The allegations against the appellant are grave in nature. Previously, another FIR was lodged by the prosecutrix against the appellant with similar allegations and the appellant being an influential person, has tampered with the prosecution evidence and final report under Section 173 Cr.P.C. was got presented before the trial Court and no adjudication on merits in the previous FIR took place.

12. Considering the facts and circumstances of the case, it is not a fit case to grant concession of pre-arrest bail to the appellant. There is no illegality or irregularity in the findings arrived at by the Additional Sessions Judge, Sirsa while dismissing the bail application of the appellant, as such, no interference in the impugned order dated 11.01.2024, passed by the Additional Sessions Judge, Sirsa, is made out. Consequently, the present appeal stands dismissed being devoid of merits.”

7. A perusal of the facts and circumstances as noticed in the previous order, indicate that both the appellant and the prosecutrix are married to their respective spouses. In the FIR, the prosecutrix has alleged that the appellant Anil Kumar is her distant relative. It is also observed that the counsel representing respondent No. 2 has opposed the appeal, on the



ground that the appellant is a police officer. He is constantly harassing and sexually abusing the prosecutrix. The acquaintance of the appellant and threatening the prosecutrix of involving her husband in a false case of drug smuggling. Whereas the appellant has challenged the same order passed by the learned Sessions Judge, on the ground that there is change of circumstances, on the basis of compromise deed, dated 08.05.2024 (Annexure P-3), wherein it is alleged that the appellant and the prosecutrix came in contact with each other in January 2021 and thereafter, they decide to have live-in relationship. The prosecutrix started the live-in relationship with the present appellant with her consent and without any pressure as she was not happy with her marriage. It is further alleged that both the parties are having live-in relationship since April 2021 and they got executed a live-in relationship deed on 01.04.2021 and since then they are contentiously living in the said relationship.

8. Firstly, the appeal stands already decided on merits and the respondent has opposed the grant of anticipatory bail on the ground of threats. Secondly, in case the said compromise is accepted, this would be against the public policy, since both, the appellant and respondent No. 2-complainant are married to their respective spouses. The Court cannot stamp a live-in relationship *inter se* two married persons by granting them the concession of pre-arrest bail by way of accepting the present appeal. Polygamy is not permitted under the Hindu Marriage Act, 1955 and permitting such a relationship by allowing the appeal and granting the discretionary relief of anticipatory bail to the appellant would give a wrong signal to the society, as such, this Court is of the considered opinion that the



appellant cannot re-agitate the matter by filing the second appeal on the strength of the said compromise deed.

9. Hon’ble the Apex Court in Indra Sharma vs. K.V. Sharma (2013) 15 SCC 755, while dealing with the question of whether a relationship between an unmarried woman and a married man could qualify as a live-in relationship as defined under the Domestic Violence Act, 2005, categorically held that the respondent who was a married person could not have entered into a live-in relationship of the nature of a marriage. All live-in relationships are not relationships in the nature of marriage. It was further observed by Hon’ble the Apex Court that if the relationship between the appellant (unmarried woman) and respondent (married man) is considered as a relationship in the nature of marriage, with the sanction of the Court, grave injustice would happen to the legally wedded wife and the children who oppose the relationship.

10. In view of these reasons, the present appeal stands dismissed.

11. It is made clear that nothing observed hereinabove will be taken to be an observation on the actual merits of the case, which would be gone into by the learned trial Court wholly on the basis of evidence led/gathered before it.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 12, 2024
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether reportable	Yes