



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
219

CRA-S-2263-2024

Date of Decision: 04.07.2024

Amit

.... Appellant

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Vivek Suri, Advocate with
Mr. Dushyant Godara, Advocate and
Mr. Darpan Bansal, Advocate for the appellant.

Mr. Aditya Pal Singla, A.A.G., Haryana.

NIDHI GUPTA, J. (ORAL)

By way of the instant appeal, the appellant has laid challenge to the order dated 26.04.2024 passed by learned Additional Sessions Judge, POCSO Court, Rohtak whereby the application for grant of regular bail under Section 439 Cr.P.C. in case FIR No. 250 dated 20.06.2023 registered under Sections 328/365/376/376(3)/342/354A IPC, 4 and 8 of the POCSO Act and 3(1)(w)(i)/3(2)(v)/3(2)(va)/3(1)(w)(ii) of the SC/ST Act at Police Station Meham, Rohtak, has been dismissed.

Learned counsel for the appellant *inter alia* submits that in the present case, FIR was registered on the basis of statement of the prosecutrix herself, which reads as under:-

“To SHO, Police Station Sadar Meham, Subject: application against Smt. Khusbhu W/o Amit son of Bhagta whereby she called late in the night at about 8.30 PM and called me at her home and forcibly laid me to sit in the bike of Amit and took me to some undisclosed place and to take strict action



against both the accused. Sir, it is submitted that I Surbhi Kumari D/o Ajit R/o Behlba Panna Buchan, Tehsil Meham, District Rohtak. Sir, yesterday on 19.06.2023 in the night at about 8.30 PM my neighbor Smt. Khusbhu W/o Amit S/o Bhagta called me on my phone and called me to her house and forcibly made me sit on the bike of Amit. Both these husband and wife had called me with ill intent in their house. Till the time I could gather their intention I had reached their house and on reaching there Amit and his wife made me forcibly sit on the bike with fast speed fled away with the bike I raised hue and cry upon which the man from the neighbourhood came and followed us on their bikes and Amit started driving the bike with a fast speed. They had made me drink a cold drink which was laced and after gaining consciousness I jumped from the bike to save my life and rushed towards the village and few bike persons who were following us saved my life and brought me back home. The bike no. of accused Amit is HR-15F-6934. Accused Amit is a characterless person and drinks liquor and his wife is also takes liquor. Both of them are not scared anyone. I feel that my life respect is in danger. It is requested that legal action be taken against the aforesaid accused as they have called me and laced my cold drink and have taken me to a deserted place and have tried to commit sexual crime. I may be protected. I shall be thankful to you.”

Learned counsel for the appellant states that on the face of it, the above said FIR shows that no offence under Section 376 IPC or Sections 4 and 8 of the POCSO Act are made out against the petitioner. The complainant was 17 years and 9 months of age at the time of the incident. It is contended that the allegations made in the FIR are utterly false and fabricated. It is submitted that nothing whatsoever had happened on 19.06.2023 i.e. the date of the alleged incident, and the appellant has been falsely implicated. The appellant and his wife are only the neighbours of the complainant. Initially, the medical examination was refused by the complainant. This fact has been admitted by the complainant even in her testimony/cross-examination (Annexure P-2). However, subsequently medical examination of the complainant



was conducted on 28.06.2023. The co-accused i.e. the wife of the appellant has been kept in column No.2 and challan has been filed only against the appellant. It is stated that the appellant has been in custody since 30.06.2023. No useful purpose will be served by further detention of the appellant in custody. Thus, it is prayed that the present appeal may be allowed and the appellant be released on regular bail.

Learned counsel for the State opposes prayer made on behalf of the appellant and submits that the prosecutrix in her statement under Section 164 Cr.P.C., as also in her testimony as PW1 had supported the prosecution case. Learned counsel files custody certificate dated 03.07.2024, which is taken on record, as per which the appellant has been in custody as an undertrial for a period of 1 year and 3 days; and another FIR bearing No. 519/2020 dated N/A, registered under Sections 279 IPC, 337 IPC, 427 IPC at Police Station Meham, Rohtak has also been filed against the appellant in which he is on bail vide order dated 07.03.2024. Learned counsel, on instructions, informs that the co-accused i.e. wife of the appellant has been kept in column No.2 and challan has been filed only against the present appellant. It is further submitted that out of 22 witnesses, 8 witnesses have been examined so far.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case and the custody period of 1 year and 3 days undergone by the appellant as an undertrial; and in another FIR bearing No. 519/2020, he is on bail vide order dated 07.03.2024 as evident from the custody certificate placed on record; as



also the fact that material witnesses i.e. the complainant/prosecutrix and her father have been examined; and out of 22 witnesses only 8 witnesses have been examined so far and, therefore, the conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The appellant-Amit S/o Bhagat Singh, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

04.07.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No