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

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Date of Decision: 09.09.2024

ARIF KHAN

.. Appellant

Vs.

STATE OF HARYANA AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Pankaj Nanhera, Advocate for the appellant.

Ms. Ankita Ahuja, AAG, Haryana.

**Mr. Abhimanu Jangra, Advocate for
Mr. Karan Kaushal, Advocate for respondent No.2.**

...

SUMEET GOEL, J. (Oral)

1. Present appeal has been filed under Section 14-A of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 for grant of regular bail to the appellant in cse bearing FIR No.162 dated 25.11.2023, registered for the offences punishable under Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 4 and 12 of Protection of Children from Sexual Offences Act, Section 3 of Haryana Prevention of Unlawful Conversion of Religion Act, 2022 and Sections 120-B, 313, 323, 328, 354-D, 365, 376-D, 377 and 506 of IPC (Sections 313, 365, 354-D and 328 of IPC and Sections 4 and 12 of POCSO and Section 3 of Haryana Preventiuon of Unlawful Conversion of Religion Act, 2022 have been deleted during investigation and Section 498-A of IPC has been added later on) at Police Station Women, Faridabad,

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2. As per the case set up in the FIR is as follows:-

*“To SHO, Women's Police Station, Sector-16, Faridabad.
Subject: Complaint against Arif Khan, Saddam Khan, Azad Khan, Imran Khan, their father Badam Khan, Farida (wife of Badam Khan), Shabnam (wife of Arif), Anjum (wife of Saddam), Nazma (wife of Imran), brothers-in-law Mushlim Khan and Rizwan Khan (Tony), residents of 7, Malerna Road, 24 Feet Road, Adarsh Nagar, Ballabgarh, Faridabad, regarding forced religious conversion, gang rape, unnatural sexual exploitation, forced abortion, and caste-based abuse. Complainant I, Tevika daughter of Mr. Puran Singh, resident of Village Jatola, currently residing at Old Police Chowki Street, Adarsh Nagar, Ballabgarh, Faridabad, would like to bring to your attention the following: While studying in class 11th at the Government School, a boy used to follow me while I was commuting to and from school. One day, he introduced himself, gave me his mobile number, and gradually became my friend. In October 2017, he took me near Hotel Hilam, where he forcibly raped me after making me consume a spiked cold drink and recorded a video of the act. He threatened to post the video on social media and to kill my parents if I did not comply. He continued to rape me at various places. In 2019, he drugged me again, kidnapped me in a car, and forcibly took me away. When I regained consciousness, I found out that he had converted me to his religion and shown me a certificate of conversion and a marriage document, claiming I was now his wife, Zoya. He started keeping me at his house in Adarsh Nagar, where his three brothers also raped me. His brothers-in-law, Mushlim Khan and Rizwan Khan, also sexually exploited me. Whenever I protested, Arif's wife Shabnam, his sister Anjum Khan, his mother Farida, and sister-in-law Nazma would taunt me with caste-based slurs, saying that in their religion, women had to please all men, and I had to do the same. They kept me in a buffalo shed, where all the above-mentioned accused would sexually exploit me. On 31/12/2019, Rizwan Khan, Mushlim Khan, and Arif Khan tried to kill me by pushing me from a height. An FIR No. 3 was got registered on 04.10.2020 regarding this, but the culprits got it dismissed. Later, Farida, Shabnam, Anjum, and Nazma forcefully gave me abortion pills and aborted my pregnancy in the buffalo shed. These accused gave me abortion pills again, causing severe health issues, and I was admitted to Renu Hospital, Mohana Road, on 16.10.2023, where another abortion was performed. On 27.12.2023, Arif and his family members assaulted me with the intent to kill for refusing to have physical relations with his brothers. I managed to escape and called 112, but no police arrived. An ambulance took me to Ballabgarh City Hospital, where my MLR was conducted. That night, I was taken to BK Hospital, where I received treatment. I request you to take legal action against all the accused XXXX.”*

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3. Learned counsel for the appellant has argued that the appellant is in custody since 23.01.2024. Learned counsel for the appellant has submitted that as per case put forward by the complainant, she is wife of the appellant, therefore, the appellant cannot be said to commit any kind of rape upon the complainant. Learned counsel for the appellant has further submitted that earlier also the complainant had got registered one FIR bearing FIR No.3 dated 03.01.2020 under Sections 323, 344, 365, 376-D, 497 and 506 of IPC read with Section 120-B of IPC registered at Police Station Palwal, Haryana which was later on cancelled on the statement made by the complainant. Thus, regular bail is prayed for.

4. Counsel for the State, on the other hand, contends that the impugned order has been passed considering the totality of the circumstances of the case. All the grounds raised by the appellant have been considered and dealt with in their proper perspective by the trial Court. Therefore, the appellant is not entitled to the concession as prayed for.

5. Learned counsel for the complainant has vehemently opposed the grant of regular bail to the appellant by arguing that the allegations made against the appellant are serious in nature. Learned counsel for the complainant has submitted that there are all the chances that the appellant may try to harm the complainant, if released on bail. Learned counsel for the complainant has further submitted that multiple other FIRs are against the appellant and the appellant is a person with criminal background and hence he ought not to be granted the concession of regular bail.

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

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7. The appellant was arrested on 23.01.2024 whereinafter investigation was carried out and challan stands presented on 28.03.2024. Total 27 prosecution witnesses have been cited and culmination of the trial, but of course, will take its own time. The rival contention of the learned counsel for the parties; as to whether the offence of rape is made out against the appellant in view of the fact that the complainant is stating that the appellant is the husband of the complainant as also the effect of earlier FIR having been registered against the appellant on similar like allegations and the same having been cancelled upon an affidavit given by the complainant; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the appellant absconding from the process of justice or interfering with the prosecution evidence. As per custody certificate dated 11.08.2024 filed by learned State counsel, the appellant has suffered incarceration for more than 06 months. Though, the appellant is stated to be involved/earlier involved in 13 other FIRs, but this factum by itself would not be sufficient to decline the concession of regular bail to the appellant in the instant appeal. Suffice to say further detention of the appellant as an undertrial is not warranted in the facts and circumstances of the present case.

8. In view of totality of factual matrix of the present case, the instant appeal is allowed. Appellant is ordered to be released on regular bail on his furnishing bail/local surety bonds to the satisfaction of the concerned learned CJM/Duty Magistrate. However, in addition to conditions that may

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be imposed by the concerned learned CJM/Duty Magistrate, the appellant shall remain bound by the following conditions:-

- (i) The appellant shall not mis-use the liberty granted.
- (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 cellphone 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/Illaqqa Magistrate.
- (vii) The appellant shall not in any manner try to delay the trial.

9. 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.

10. Ordered accordingly.

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



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

09.09.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No