



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

245

CRA-S-2588-2024 (O&M)
Date of Decision: 19.10.2024

KANTA ALIAS MUSKAN

....Appellant

VERSUS

STATE OF HARYANA AND ANR.

....Respondents

CORAM : HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Parminder Singh, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present appeal has been filed against the order dated 07.06.2024 passed by learned Court of Additional Sessions Judge, Karnal in case arising out of FIR No.172 dated 19.06.2023 registered under Section 365 IPC read with Section 120-B IPC, Section 3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC & ST Act') and Sections 4 & 12 of Protection of Children from Sexual Offences Act (for short 'POCSO Act') at Police Station Ram Nagar, Karnal whereby the third application for grant of regular bail as filed by the appellant had been dismissed.

2. The appellant had been booked in this case on the allegations that on 19.06.2024, the victim- 'S' (name withheld) who was a minor girl of 15 years of age, had gone missing from her house and could not be traced. On the complaint made by her mother, FIR was registered and investigation proceedings were initiated. Thereafter, she was recovered from Sainik Rest

House, Ambala Cantt on 20.06.2023. Her statement under Section 164 of



Cr.P.C. was recorded wherein she disclosed that though she had left her house at her own accord but the petitioner had taken her to Ambala and then to Chandigarh. She also recorded that petitioner got a hotel booked for her and had called a youth who had attempted to commit wrong acts with her. Offences under Section 4 read with Section 12 of POCSO Act were added. The victim refused to get her medical examination conducted by saying that nothing wrong happened with her. The appellant had been arrested on 24.06.2023. Subsequently, offence under Section 12 of POCSO Act was deleted and offence under Section 18 of the said Act was added. The co-accused Rajesh Malik could not be arrested. The appellant is facing trial for commission of aforementioned offences. Previously, she had filed an appeal bearing CRA-S-3652-2023 against the order dated 11.03.2024 passed by learned trial Court whereby her first application for grant of regular bail had been dismissed.

3. It is argued by learned counsel for the appellant that the appellant is in custody since 25.06.2023. It has been revealed from the documents produced on record that she has been suffering from mental ailments and is under treatment and due to being in depression, she is not even capable of taking any defence. The provisions of SC & ST Act or POCSO Act are not at all made out against her. The trial is taking time since so far no witness has been examined. The victim herself is also not appearing into the witness box. Rather in a petition seeking quashing of FIR as filed by the co-accused Rajesh Malik, she has taken a stand that she has no objection to quashing of the same and this fact falsifies the entire version



of the prosecution. Keeping in view the mental condition of the appellant as well as period of her incarceration, she does not deserve to remain in custody any more. The extended period of her custody has also furnished a new ground for filing appeal thereby seeking her release on bail. Learned Additional Sessions Judge while passing of the impugned order did not take this fact into consideration. Hence, it is argued that impugned order is liable to be set aside and appeal deserves to be accepted and further that the appellant deserves to be extended benefit of bail.

4. Reply by way of affidavit has been filed by respondent-State. Along with reply, a report prepared by the Institute of Mental Health, UHS, Rohtak, Department of Psychiatry, PGIMS, Rohtak has been annexed, which reveals that the appellant was examined by the medical board consisting of Members of Department of Psychiatry on 13.09.2024 and as per this report, the appellant was suffering from Recurrent Depressive Disorder, currently in remission. Her psychological testing report reveals emotionally unstable personality traits. However, she was not having psychopathology at that time and was of sound mind, understood the nature of crimes, Court proceedings and was capable to make out her defence.

5. Learned State counsel has argued that the above report indeed shows that appellant is very much capable of taking her defence during trial. While urging that there are serious allegations against the appellant and previous appeal filed by her against the order of rejection of second bail application had been dismissed, it is urged that instant appeal also does not deserve to be allowed.



6. I have heard learned counsel for the appellant as well as learned State counsel at considerable length and have gone through the record carefully.

7. As per allegations, the appellant had induced the victim who was a minor girl of 15 years of age to leave her parental house and had abetted commission of offence punishable under Section 4 read with Section 18 of POCSO Act by the co-accused Rajesh Malik, who has not been arrested so far. So far as the offences under the provisions of SC & ST Act are concerned, while deciding the previous appeal bearing CRA-S-3652-2023 as filed by the appellant, it has been observed by this Court that provisions of SC & ST Act had not been *prima facie* attracted against the appellant.

8. The appellant is alleged to have booked a hotel on the basis of her identity proof wherein she had allegedly taken the victim when the co-accused made an attempt to commit act of penetrative sexual assault upon her. There is no medical evidence about the victim having been assaulted as she had refused to get her medical examination conducted. In the reply by way of affidavit by respondent-State, the appellant has been stated to be suffering from psychiatric illness and from emotionally unstable personality disorder. As discussed above and as per report of Department of Psychiatry PGIMS, Rohtak also though she is not having any active psychopathology at the time of examination on 13.09.2024, however, she was suffering from Recurrent Depressive disorder and emotionally unstable personality traits. Her previous appeal for grant of regular bail had been dismissed as on



11.03.2024. Ever since then, no witness of the prosecution including the victim has been examined by the prosecution before learned trial Court. It is not in dispute that the co-accused who has still not been apprehended, has entered into a compromise with the victim and has moved an application for seeking quashing of FIR on the basis of such compromise which is pending. Long period of incarceration coupled with fact that no possibility to conclude trial in near future is a fresh ground for grant of bail as observed by Hon'ble Supreme Court in order dated 27.07.2021 pronounced in Criminal Appeal No.693 of 2021 titled as '***Paras Ram Vishnoi Vs. The Director, Central Bureau of Investigation***' and by High Court of Allahabad in case titled as '***Anokhi Lal Second Bail Vs. State of U.P., 2022 LiveLaw (AB) 146***'.

9. Keeping in view the period of incarceration of the appellant which is more than one year four and half months, the fact that she is having emotionally unstable personality traits, the nature of the allegations as levelled against her which suggest that she had induced the victim to go with her to a hotel and there is nothing on record to suggest that it was she who was instigating the co-accused to make an attempt to commit act of penetrative sexual assault upon the victim, coupled with the fact that trial is likely to take time since not even a single witness has been examined so far, I am of the considered opinion that the appellant deserves to be released on bail at this stage. As such, appeal is allowed and the impugned order is set aside and the appellant is ordered to be admitted to bail subject to her



furnishing personal as well as surety bonds to the satisfaction of the learned trial Court.

10. It is however clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

19.10.2024
Deepak Patwal

(MANISHA BATRA)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No