



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

206

CRA-S-2908-2024

Date of Decision : **October 25, 2024**

RAKESH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Manoj Kumar Taya, Advocate for the appellant.
Mr. Abhinash Jain, DAG, Haryana.
Mr. Liyakat Ali, Advocate for the appellant.

KULDEEP TIWARI, J. (Oral)

1. Through the instant appeal, challenge is thrown to the order dated 14.5.2024 passed by the learned Additional Sessions Judge/Fast Track Special Court (POCSO), Karnal, whereby, the second bail application filed by the appellant for grant of regular bail in case FIR No.321 dated 7.6.2023, Under Sections 377, 363, 506 IPC and under Sections 3(2)(v), 3(2)(va) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, and under Section 4 of the POCSO Act, registered at Police Station Gharaunda, Karnal.

2. The instant FIR has been registered with the allegations that the appellant has committed sexual assault upon the son of the complainant, who is stated to be 14 years of age. The relevant extract of the FIR reads as under:-

“I have three sons, the eldest son (name withheld) is 14 years old and studies in the 9th class in the village school. That my son had gone to the Anganwadi of the village to play at around five o'clock

in the Evening. That one Rakesh alias Chhanga son of Lakhi, who is also a boy from my village, has taken my son to his field and did wrong acts with him and threatened to kill in case of telling anyone and left him outside the village school on a motorcycle and ran away. My son came home and told these things to my wife. Please take legal action against Rakesh alias Chhanga.”

3. Learned counsel for the appellant in the asking for the relief (supra) submits that the appellant has suffered incarceration of about 1 year and 4 months as on today and only victim has been examined so far. While drawing the attention of this towards the medico-legal report, which is annexed as Annexure P-2, he further submits that there is no mark of any external injury on any part of the body, including anal region, therefore, the allegations against the appellant are not supported by any medical evidence, as produced by the prosecution before the learned trial Court concerned.

4. The learned State counsel has opposed the prayer made by the learned counsel for the appellant and also placed on record the custody certificate *qua* the appellant, today in the Court, the same is taken on record. He further submits that out of total 17 prosecution witnesses cited by the prosecution, only 1 witness has been examined till date i.e. victim, who has supported the prosecution case.

5. Learned counsel for respondent No.2-complainant submits that the complainant is yet to be examined, therefore, the appellant may not be enlarged on regular bail. He further submits that the age of victim at the time of commission of crime was only 14 years and, therefore, the appellant is not entitled for the relief of regular bail.

6. This Court has considered the rival submissions made by the learned counsel for the parties concerned.
7. Be that as it may, considering the fact that the appellant has suffered incarceration of about 1 year, 3 months and 23 days as on today and he has clean antecedents and only 1 witness has been examined out of total 17 cited prosecution witnesses, therefore, the conclusion of trial would take long time and whether the appellant has committed the alleged offence especially in view of the medical evidence, is a disputed question of facts and the same is to be adjudicated by the learned trial Court concerned, after appreciation of evidence, which is to be adduced by the prosecution, therefore, this Court refrains to comment upon the same, and deems it fit and appropriate to extend the benefit of regular bail to the appellant. Therefore, the present appeal is **allowed** and the impugned order is set-aside.
8. The appellant is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.
9. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

October 25, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No