

Sr. No.290+123

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-1690-2024 in/and
CRA-S-2455-2023
Date of decision: 05th February, 2024

SUSHIL KUMARPetitioner

versus

STATE OF HARYANARespondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Sushil Jain, Advocate;
Mr. Karan Pathak, Advocate;
Mr. Ribhav Singla, Advocate and
Ms. Mehtab Kamboj, Advocate
for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

Mr. Harshit Jangra, Advocate and
Mr. Kahishk Sahni, Advocate
for the complainant.

HARPREET KAUR JEEWAN, J. (ORAL)

CRM-1690-2024

Allowed as prayed for. The statement of the prosecutrix recorded during trial is taken on record as Annexure P-8, subject to all just exceptions.

CRA-S-2455-2023

1. Prayer in the present appeal is for setting aside the order dated 16.08.2023, passed by the learned Additional Sessions Judge, Bhiwani, whereby the application for grant of regular bail to the petitioner in FIR No.185 dated 24.04.2023, under Sections 323, 354-A, 506 read with Section 34 IPC and Section 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities)

Act, 1989 (Sections 354-D, 376(2)(n), 376-D of IPC added later on), registered at Police Station City Bhiwani, District Bhiwani (Annexure P-1), was dismissed.

2. Learned counsel for the appellant *inter alia* contends that the appellant being a public-spirited person has filed various applications involving embezzlement of public funds, which runs into more than 100 crores and he is running a Non-Governmental Organization (NGO) under the name and style of '*Shikhar Chetna Sangathan & Bal Kranti*'. The appellant is also a member of '*Haryana State Child Rights Protection Commission*' and he has been actively participating in fighting for the rights of the children. On the basis of the matter initiated at the instance of the appellant, FIR No.224 dated 15.04.2022, under Sections 420, 467, 468, 471 IPC at Police Station Bhiwani City, Bhiwani (Annexure P-2), was registered against the officials of the Municipal Council for embezzlement of the Government funds. Another FIR No.251 dated 26.04.2022, under Sections 34, 406, 420, 467, 468, 471 IPC, Police Station City Bhiwani (Annexure P-3) and FIR No.469 dated 17.08.2022, under Sections 406, 420, 467, 468, 471 and 120-B IPC, Police Station City Bhiwani, District Bhiwani (Annexure P-4) was registered against the former Chairman, Municipal Council, Bhiwani and other officials and Municipal Councillors. Since no action was being taken in the FIRs, as such, the appellant had approached this Court by way of filing case bearing No.CWP-22313-2022, titled as "*Sushil Kumar Verma vs. State of Haryana and Others*" wherein, order dated 17.01.2023 was passed by this Court (Annexure P-5). After the registration of the aforesaid FIRs, the former Chairman and Vice-Chairman of Municipal Council, Bhiwani along with other officials were arrested. The appellant had been arranging manpower and running a company and providing administrative staff as well as staff for cleanliness and cooking in various

namely Harsh, who is looking after the local affairs of the company of the appellant, refused to grant long leave to the prosecutrix, at whose instance the present FIR has been registered. The prosecutrix was not attending her duties at the relevant time when she had alleged in her complaint that the Manager had uttered caste-related words to her.

3. Learned counsel for the appellant further contends that the trial Court, while dismissing the bail application of the appellant, has ignored the material controversy on the basis of which the FIR was got registered by levelling false allegations of sexual harassment. It is further contended that the prosecutrix is more than 40 years of age having 03 children and the co-accused of the appellant has been declared innocent during investigation. The statement of the prosecutrix has already been recorded during trial.

4. Learned State counsel has filed status report by way of affidavit of Sh. Ramesh Kumar, HPS, Deputy Superintendent of Police (H.Q.), Bhiwani, Haryana, on behalf of respondent-State of Haryana and the same is taken on record. Learned State counsel has opposed the bail application on the ground of gravity of allegations levelled against the appellant. However, the fact that the appellant Sushil Kumar was arrested on 02.05.2023 has been admitted by the learned State counsel. The investigation is complete. Final report under Section 173 Cr.P.C. has been presented in the trial Court and statement of 14 witnesses has already been recorded including the statement of the prosecutrix (Annexure P-8/R-6). It is also admitted by the State counsel that during the investigation, no evidence was found against accused Harsh and he was exonerated. Challan was also not filed against him.

5. Learned counsel for the complainant has opposed the prayer of the petitioner on the ground of gravity of allegations and that the complainant is being threatened to withdraw the case.

6. I have considered the aforesaid contentions. As per the version of the prosecutrix, she belongs to Balmiki caste and was working as a maid servant in the office of the appellant for the last 10 years. She was on leave for one month due to illness and when she went to the office of the appellant, his Manager Harsh (non-appellant) hurled caste-related abuses and threw her out. The appellant and his Manager Harsh had been sexually assaulting her for the last 10 months and they were threatening to kill her.

7. The investigation is complete. During investigation, the allegations against the co-accused of the appellant were not found to be correct. The final report under Section 173 Cr.P.C. has already been presented only against the appellant and his custodial interrogation is not required. The statement of the material witness (prosecutrix) has also been recorded, as such, there is no threat or apprehension of tampering with the material evidence. It is a matter of record that various FIRs (Annexures P-2 to P-4) have been registered and the appellant is the complainant/informant in the said FIRs. As per the copy of the Medico Legal Report of the victim (Annexure R-1), in the history recorded by the doctor, the patient did not remember the last attempt of sexual assault. The prosecutrix is married and having children. The delay in recording the FIR is a matter of trial. As per the Forensic Science Report (Annexure R-3), human semen could not be detected on any of the exhibits except the exhibit which is wearing clothes of the accused-appellant.

8. There are various debatable questions which are matter of trial.

Keeping the petitioner in custody during the trial would not serve any purpose.

Conclusion of trial is likely to take time, as such, without expressing any opinion on the merits of the case and keeping in view the facts and circumstances of the case, the present appeal is allowed. Impugned order dated 16.08.2023, passed by the learned Additional Sessions Judge, Bhiwani, is set aside and the appellant is ordered to be released on regular bail, subject to his furnishing adequate bonds/surety to the satisfaction of the trial Court/CJM, concerned.

9. All the pending miscellaneous applications, if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

05th February, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No