

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S No.2464 of 2023 (O&M)
Date of decision: 30.04.2024

Gurinder Singh @ Guri ... Appellant

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Abhinav Jain, Advocate,
for the appellant.

Mr. Amandeep Singh Samra, AAG, Punjab.

None for the complainant.

MANISHA BATRA, J.

CRM No.43517 of 2023

The application is allowed, as prayed for and Annexure P-6,
statement and cross examination of PW3 Baljit Kaur, is taken on record.

CRM No.49401 of 2023

The application is allowed, as prayed for and Annexure P-7,
examination in chief and cross examination of PW1, is taken on record.

Main Case

1. The present appeal has been filed under Section 14-A of the
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)
Act, 1989 (For short “SC&ST Act”) challenging the order dated
04.08.2023 as passed by learned Additional Sessions Judge, Fast Track
Special Court, Moga whereby an application for grant of regular bail as

filed by the appellant in case arising out of FIR No.51 registered under Sections 354-A and 354-B of IPC and Section 10 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) and Section 3 of SC&ST Act at Police Station Badhni Kalan, had been dismissed.

2. Shorn of unnecessary details, the brief facts relevant for the purpose of disposal of the present appeal are that the aforementioned FIR was registered on 27.06.2023 on the basis of statement recorded by the complainant “B” (name withheld) alleging therein that she belonged to SC&ST community. The victim who was her younger daughter aged 10 years, used to take tuitions from Rajvir Kaur wife of the present appellant since March 2023. On 23.06.2023, she was dropped at the house of the appellant at 4:30 PM and her tuition was to continue till 6 PM. She alleged that on receipt of a phone call from the wife of the appellant in the evening, her brother-in-law had gone to bring the victim back at her house who came there at 7 PM and sometime thereafter, told her that after the tuitions were over, the appellant finding her alone, had taken her behind the almirah of a room on the pretext of playing hide and seek game with her and had made her hold his private parts and also inserted his finger in her private parts and as she had started crying, he had threatened her not to tell about the incident to anyone. The complainant alleged that she had made complaint to the wife of the appellant on the same night and the matter was also reported to the village Sarpanch but no action was taken and thereafter she had come to lodge complaint before the police. On this complaint and after registration of FIR,

investigation proceedings were initiated. The victim was medically examined. Her mother refused to provide vaginal swabs and blood samples of the victim. As per the medico report, no injury was found on her person. The statement of the victim was recorded under Section 164 of Cr.P.C. wherein she supported the version as given in the FIR. The appellant was arrested on 28.07.2023. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the appellant is facing trial for commission of offences punishable under Sections 354-A and 354-B of IPC, Sections 6 and 10 of POCSO Act and Section 3 of SC&ST Act. The appellant had moved an application for grant of regular bail which was dismissed by the learned trial Court vide the impugned order.

3. It is argued by learned counsel for the appellant that the impugned order is liable to be set aside as the same is not sustainable in the eyes of law as well as facts. A false story has been concocted against the appellant. There is delay of five days in reporting the matter to the police which has not been satisfactorily explained. No injury had been found on the person of the victim. Her vaginal swabs and blood samples were refused to be given by her own mother and there is no medical evidence qua her being ravished/subjected to aggravated penetrative sexual assault. Neither the victim nor her mother who are star witnesses of the case have supported the version of the prosecution. No useful purpose would be served by detaining the appellant in custody any more and he has already undergone a period of more than nine months in custody. The learned trial Court did not consider all pleas or the

contentions as raised by the appellant with the proper perspective. The mother of the victim i.e. the complainant has sworn affidavit Annexure P-5 on 11.08.2023 submitting that the FIR had been lodged due to some misunderstanding. With these submissions, it is urged that the impugned order is liable to be set aside, the appeal deserves to be accepted and further that the appellant deserves to be released on bail.

4. Status report has been filed by the respondent-State as per which, after conducting thorough investigation in the matter, the allegations as levelled against the appellant were found to be correct. It is argued by learned State counsel that there are serious allegations against the appellant and, therefore, the learned trial Court has committed no error in dismissing the application for grant of regular bail. Accordingly, it is urged that the appeal is liable to be dismissed.

5. I have heard learned counsel for the appellant and learned State counsel and have gone through the record carefully.

6. As per the allegations, as levelled in the FIR, as on 23.06.2023, the victim who had gone to take tuitions in the house of the appellant from his wife when she had been sexually harassed and ravished by the appellant. The victim is claimed to be ten years old girl studying in sixth class. The appellant has placed on record Annexure P-6 copy of statement of the complainant i.e. mother of the victim as recorded before learned trial Court on 04.10.2023 and a perusal of the same reveals that she did not support the prosecution version at all by saying that the appellant had not done anything wrong with her daughter; that her thumb impressions were obtained by the police on some blank papers and

further that she had not recorded any statement before the police. Her statement shows that she had been declared hostile on request of learned Public Prosecutor and was allowed to be cross-examined by him but even during cross-examination, she did not relent and maintained the same standard. Meaning thereby that she did not support the prosecution version at all and gave a total go bye to the same.

7. Further, a copy of statement of the victim has also been placed on record as Annexure P-7 (Colly). It is revealed that her examination-in-chief was recorded on 18.09.2023 and she was cross-examined on 13.10.2023. In her examination-in-chief, she is shown to have supported the version of the prosecution in toto. However, on going through the cross-examination of the victim, it is revealed that she also took a somersault and completely resiled from her previous version by stating that on the date of occurrence, she had not gone for her tuitions, that the appellant had not done any wrong with her and that her statement was recorded under Section 164 of Cr.P.C. under the pressure of some females who were not known to her and that a female police official standing outside the Court had told her to depose as against the appellant. She also stated that her signatures were obtained on some blank papers. She was allowed to be re-examined by the Public Prosecutor but even then she stated that at the time of recording her statement under Section 164 Cr.P.C., she was under the threat of police officials and some unknown persons. On a perusal of the testimony of the victim, it appears that she has resiled from the version as given to the police, to the Judicial Magistrate under Section 164 of Cr.P.C. as well as the version as

recorded during her examination-in-chief during the course of cross-examination and her mother has not supported the prosecution version at all. This might due to some out of Court settlement or any other reason but the position that emerges is that the testimony of the minor victim cannot be presumed to be trustworthy as she had taken total contradictory stands during the course of her examination and then cross-examination whereas her version has not been supported by her mother at all. There is also delay of five days in reporting the matter to the police. The vaginal swabs and blood samples were even refused to be given at the time of conducting her medical examination. Taking all circumstances into consideration but without meaning to make any comment on the merits of the case lest the same may cause prejudice to either the prosecution or the appellant, I am of the considered opinion that the appellant deserves to be extended benefit of bail. Hence, the appeal is allowed and the impugned order dated 04.08.2023 is set aside, the appellant is ordered to be admitted to bail subject to his furnishing personal/surety bonds to the satisfaction of learned trial Court.

30.04.2024

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No