

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

257

CRA-S-2631-2023 (O&M)
Date of decision: 23.01.2024

Harjinder Sharma ...Appellant

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sarabjit Singh, Advocate
for the appellant.

Mr. P. S. Pandher, AAG, Punjab.

Mr. G. S. Thind, Advocate
for respondent No. 2/complainant.

MANISHA BATRA, J. (Oral)

1. The present appeal has been preferred against the order dated 05.09.2023, passed by the Additional Sessions Judge, Amritsar, whereby the regular bail application filed by the appellant, in case FIR No. 150 dated 21.22.2022, registered under Sections 323, 376, 384, 503, 506, 201 of the IPC and Section 3 of the Scheduled Castes and Scheduled Tribes Act, 1989 (*for short 'SC/ST Act'*) at Police Station E Division, Amritsar, has been dismissed.
2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR had been registered on the basis of a complaint filed by respondent No. 2 alleging therein that she had come into contact with the appellant through Instagram as on 30.05.2021 and they had become friends while making conversations with each other. Even they used

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to talk to the families of each other. She alleged that the appellant by inducing her on the pretext of performing marriage with her had taken her to Amritsar, wherein he ravished her. He had prepared videos and obscene photographs of the act and thereafter started blackmailing her by threatening that he would share those videos/photographs with her family. She also alleged that the appellant started extorting money from her and when he came to know that the complainant belongs to scheduled caste category, he even started using derogatory language against her while talking to her on phone and due to which she had even started contemplating suicide due to the harassment meted out at the hands of the appellant. As such, she prayed for taking penal action against the culprit. After registration of the FIR, investigation proceedings were initiated. The appellant surrendered in Court on 10.01.2023. After completion of investigation and usual formalities, challan was presented in Court and presently, the appellant is facing trial for the aforementioned offences. He had moved an application before the Additional Sessions Judge, Amritsar for grant of regular bail but the same had been dismissed by passing the impugned order.

3. It is submitted in the grounds of appeal and learned counsel for the appellant has argued that the impugned order is not sustainable in the eyes of law and is liable to be set aside as the appellant is in custody for a period of more than one year. The allegations as against him do not make out any case for commission of offence of rape and even the provisions of Section 3 of SC/ST Act have not been attracted. In her statement recorded before the Court, respondent No. 2 has not implicated the appellant in commission of subject offences and has even stated that the statement recorded under Section

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164 Cr.P.C. had been recorded by her as against the appellant under the pressure of the police. It is also submitted that even otherwise, a compromise has been effected between the parties and respondent No. 2 has sworn an affidavit (Annexure A-3) and executed a compromise deed (Annexure A-2) in his favour. Therefore, it is argued by learned counsel for the appellant that the impugned order is liable to be set aside; the appeal deserves to be accepted and the appellant deserves to be given benefit of regular bail.

4. *Per contra*, learned State counsel has argued that the appellant has been chargesheeted for commission of serious offences, therefore, the appeal is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

6. The appellant is alleged to have induced respondent No. 2 to enter into physical and sexual relationship with him on the pretext of performing marriage with her and is further alleged to have started forcibly committing rape upon her repeatedly, blackmailing her, extorting money from her and is further alleged to have used derogatory language against her in the name of her caste. The appellant has placed on record a copy of the sworn statement recorded by respondent No. 2 before the trial Court, wherein she is shown to have given a complete go bye to the prosecution version by saying that though she had met some person through Instagram on 30.05.2021 but neither she knew the name of said person nor she had met him or remained in contact with him online and is also shown to have stated that the appellant had never remained her friend nor he had committed any wrong with her. It is revealed that she was declared hostile on the request of learned public

prosecutor to the effect that she was concealing the truth and was allowed to be cross-examined by him and was cross-examined in detail but she remained stuck to her stand and had not made any deposition as against the appellant. With regard to her statement as recorded under Section 164 Cr.P.C., she is shown to have stated that it was suffered under the pressure of the police. Though no credence can be given to the compromise deed or affidavit, which are shown to be executed/sworn between the parties, however, keeping in view the nature of the evidence which has come on record before the trial Court in the form of testimony of the complainant, I am of the considered opinion that no useful purpose would be served by detaining the appellant further in custody.

7. Accordingly, the present appeal is allowed and the impugned order is set aside. The appellant is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

8. It is made clear that any observation made herein above is only for the purpose of deciding the present appeal and the same shall have no bearing on the merits of the case.

23.01.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>