



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

218

CRA-S-3187-2024

Date of decision: 16.10.2024

Parveen Kumar

....Appellant

V/s

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rahul Yadav, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

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SUMEET GOEL, J. (Oral)

1. Present second appeal has been filed under Section 14-A of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 for grant of regular bail to the appellant in case bearing FIR No.319 dated 15.11.2023, registered for the offences punishable under Sections 323, 366-A, 506, 34 of IPC, Section 4 of POCSO Act and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Kosli, District Rewari.

2. The case set up in the FIR in question is as follows:-

*“To, The Chowki Incharge, Sir, it is a request that I am Ravinder Kumar S/o Sh. Hawa Singh resident of village Bhadangi. I drive an auto-rickshaw. On date 15.11.23, at 1.00 PM, my village's two boys namely Parvin s/o Satbir (caste Chamar) and Satpal s/o Subhash (caste-Ahir) took my son Lakki to the playground of my village and forcefully took my son on a bike. Both boys had taken my son Lakki at village Naya Gaon Jato wala. Both the boys beat up my son Lakki and after that both of them put Guptang/penis in his mouth. The boy ran away from there and took the help of a person working in the field of the same village and that person called the police helpline number 112. Both the boys threatened to kill my son Lakki. The boy told me the whole incident. You are requested to take*



*strict legal action against the above two boys. My boy Lakki's date of birth is 21-10-2008. I Ravinder belong to Chamar caste”*

3. The appellant had earlier applied for grant of regular bail before this Court which was dismissed as withdrawn on 12.03.2024. The relevant part of said order reads as under:-

*“Faced with the situation that the statement of the victim is yet to be recorded as a prosecution witness, learned counsel for the appellant seeks permission to withdraw the present appeal at this stage.*

*Permission is granted. The present appeal is dismissed as withdrawn at this stage.”*

Thereafter, the present petition i.e. the second petition for grant of regular bail has been preferred by the appellant on 17.09.2024.

4. Learned counsel for the appellant has iterated that the appellant has been falsely implicated in the present case as he has no connection whatsoever with the commission of the alleged offence in any manner. It has been further reiterated that the appellant has been wrongly named in the FIR, despite having no involvement in the occurrence of the alleged incident. Learned counsel has further contended that the appellant was not apprehended at the scene of the occurrence. It has been further submitted that the statement of the victim stands recorded and the testimony of the victim would show that the appellant is not involved in the sexual assault committed upon the victim. Furthermore, there is no direct or circumstantial evidence linking the appellant to the offence in question. It is further submitted that the FIR is the result of mistaken identity making the prosecution of the appellant unjust and unwarranted. According to learned counsel, investigation has been completed; charges have been framed and



reiterated that during the cross-examination of the victim, he unequivocally testified that the appellant neither asked him to sit on the bike nor drove the bike. Furthermore, the victim has confirmed that the appellant did not inflict any injury upon him; engage in any wrongful act or attempt to remove his clothes. Learned counsel asserts that the testimony of the victim directly contradicts the allegations made against the appellant and clearly demonstrates that he has been falsely implicated in the instant case. It has been further asserted that the absence of any incrimination evidence from the testimony of the victim, it is established that the charges against the appellant are baseless and unsustainable in law. Therefore, it is evident that the involvement of the appellant in the alleged offence is a result of mistaken identity or malicious prosecution. It has been further submitted that there is no likelihood or apprehension of tampering with evidence by the appellant at this stage, as all the material witnesses, including the victim, having been examined. In this view of the matter, learned counsel has prayed for grant of regular bail.

5. Learned State counsel has vehemently opposed the grant of regular bail to the appellant on account of the present petition being non-maintainable as it is the second petition for grant of regular bail as also on merits thereof. Learned counsel further asserts that allegations raised are serious in nature as the testimony of the victim clearly depicts that he has been sexually assaulted. According to learned State counsel, the appellant has allegedly committed sexual assault upon the victim, who is prima facie stated to be around 15 years of age at the time of the alleged occurrence. Learned State counsel has further submitted that out of total cited 26 prosecution witnesses, 06 have been examined.



6. I have heard the learned counsel for the parties and have gone through the available records of the case.

7. It would be apposite to refer herein to a judgment passed by this Court in ***Rafiq Khan vs. State of Haryana and another: 2024: PHHC:054064***; relevant whereof reads as under:-

9. *The paramount issue, in any plea for grant of regular bail, is the liberty of an individual. Indubitably, within our society and jurisprudence, liberty is a cherished foundational principle and has fundamental ascendancy over all other attributes of social order. Even within the framework of Constitution, this principle is made conspicuous, inter alia, in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The Cr.P.C., 1973 is one such procedural law which permits curtailment of liberty of anti-social and anti-national elements. Yet, liberty of an individual, the accused, must not transgress the rights of another individual, the victim, in terms of right to dignified everyday life without any imminent fear or threat. Additionally, the rights of the collective of individuals viz. the State/Society at large, also cannot be neglected. Therefore, while countenancing the facts for considering the bail, the rights of the triad of accused, victim and the State (Society at large) ought to be entailed. Ergo, while considering a bail plea, the Court ought to take into account this core concept(s).*

9.1 *An analytical perusal of Cr.P.C. explicates that this statute does not contain any provision relatable to maintainability or otherwise of second/successive bail petitions, including one(s) seeking regular bail. Once there is no statutory prohibition provided for in law, a Court is not logically empowered to import into it such prohibitions, especially in case of codified and legislated law. It is trite law that Courts ought not to read a provision in codified law which has not been specifically provided for by the legislature especially when such reading results into deprivation of rights. The bar contained in Section 362 of Cr.P.C. can, by no stretch of legal imagination, be said to be barring the filing of second/successive regular bail petition.*

9.2 *The Hon'ble Supreme Court in case of **Babu Singh** case (supra) has held that rejection of a bail petition does not, by itself, forbid a Court from considering another one, later in point of time. Similar is the ratio decidendi of the judgment of Hon'ble Supreme*



Court in **Kalyan Chandra Sarkar** (supra). Ergo, it can be safely inferred that the decision of a Court qua regular bail petition is essentially an interlocutory order and hence the postulation of res judicata does not apply to its realm.

9.3 The issue that next craves attention is as to what are the factors/parameters for consideration of second/successive regular bail petition(s).

9.4. The concordant legal position is that the essential pre-requisite for consideration of second/successive regular petition is the material/substantial change in circumstances and factors of alike nature. Indubitably, the further period of incarceration suffered by the petitioner-accused after rejection/withdrawal of first/earlier plea for bail, pace of trial, the witnesses turning hostile or not supporting prosecution case and changed medical condition(s) of accused would be pertinent factor(s). It goes without saying that these factors are only illustrative in nature and cannot by any means be said to be exhaustive.

9.5 No rigid or universal criterion can possibly be delineated to conclusively govern the exercise of judicial discretion, in determining, as to what would constitute as the above stated substantial change in circumstances. Factual flexibility, one additional or different fact, may cause a sea of difference. There is no gainsaying that each case has its own distinct and unique facts and, hence, exercise of such judicial power is best left to the judicial discretion of a Court, in accordance with the settled norms of our jurisprudence.

10. As an epilogue to the above discussion, the following principles emerge:

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.



*IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).*

*V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”*

8. No fresh substantial change in the circumstances has been brought forward which would indicate that the appellant is entitled to maintain his second appeal for grant of regular bail. The first regular bail appeal filed by the appellant was dismissed as withdrawn on 12.03.2024 and indubitably, 06 months have passed since then. A perusal of the order passed by the Court below do not reflect that the trial is not proceeding. However, since the first regular bail appeal was dismissed as withdrawn as the victim was not examined and there was no adjudication on merits thereof, this Court deems it appropriate to decide the instant one on merits thereof as well.

8.1 The allegations made in the FIR against the appellant relate to committing sexual assault upon the victim. The victim when examined as a prosecution witness (PW-5) unequivocally testified that on 15.11.2023, while returning home, the accused Parveen (appellant herein) alongwith co-accused Satpal, approached him and offered to drop him home. The victim further deposed that they made him sit in the middle of the bike. Upon reaching near



instead took him to a secluded place. There, they removed the trouser of the victim and inflicted injuries upon him. Accused Satpal forcibly inserted his private part into the mouth of the victim. The victim testified that he somehow managed to escape and, after running approximately 10 kila encountered a man and woman working in the fields, who informed the Police. In the considered opinion of this Court, the appellant, Parveen, who was actively involved from the outset by coercing the victim to sit on the bike, refusing to drop him off near his home, and taking him to a secluded area where the wrongful acts was committed, cannot escape the criminal liability. The mere fact that the sexual assault was directly committed by accused Satpal does not absolve the appellant from his role in facilitating the crime. The allegations raised against the appellant are extremely serious in nature. The rival contention of learned counsel for the parties; regarding the contradictions/discrepancies in the cross-examination of the victim cannot be looked into, in detail, at this stage, lest it may prejudice the trial. Even if it be assumed that there are contradictions/discrepancies in the cross-examination of the victim, this by itself would not be a sufficient cause to grant regular bail to the appellant. Furthermore, the allegations against the appellant are serious in nature and he is required to substantiate his defence by leading cogent evidence.

8.2 The nature of allegations made against the appellant, especially the fact that the defence itself has introduced evidence in the form of a pendrive, which shows the victim in the company of the appellant and hence proves the presence and involvement of the appellant in the incident as also that the appellant is alleged to have helped the co-accused in committing the sexual assault upon the victim, disentitles him for the grant of regular bail.



Furthermore, it has been argued that at the time the first bail appeal was withdrawn, the victim had not been examined. Now that the victim has been examined, it is pleaded that the appellant was not involved in the sexual assault upon the victim. However, from the testimony of the victim, it is clearly decipherable that the appellant herein was actively involved in the commission of crime. Accordingly, this Court is of the considered opinion that the appellant does not deserve the concession of regular bail. The petition is, thus, devoid of merits and is hereby dismissed.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

10. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)  
JUDGE

October 16, 2024  
*Ajay*

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| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |