



CRA-S-3088-2023 (O&M)
Date of decision: 07.05.2024

...APPELLANT

V/S

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. Present appeal is filed under Section 14A (2) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the impugned order dated 01.07.2022 passed by learned Additional Sessions Judge, FTSC, Sirsa, vide which bail application of the appellant has been dismissed.

2. The FIR(supra) was registered on the allegations levelled by the complainant-Nehru that he was married and had three daughters and one son. All three daughters are elder to his son. His wife had left his house leaving her children, about five year ago. On 01.09.2020, he left his house at approximately 8.00 AM for labour work and when he returned to his home at 2.00 PM he did not find his daughters namely Satbir Kaur (date of birth is 26.06.2002) and Sukhnoor Kaur (date of birth 10.11.2004), who are studying in 10th class. He searched them here and there but could not found them. Then he came to know that both his daughters have been taken away by Rajender Singh (appellant herein), of village Rasuana, Rajasthan who is nephew of Paramjit



Kaur wife of Lila Singh, Caste Jatt SIKH resident of Village Kalanwali and friend of Rajinder Singh was also with him and on these set of allegations FIR was lodged.

3. Learned counsel for the appellant *inter alia* contends that initially the appellant was not named in the FIR and his name was later on added in the same and he has been falsely implicated in the present case. It is further contended that no offence under the provision of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out from the perusal of record. It is further contended that on 22.10.2020, the prosecutrix was traced and her statement under Section 164 of Cr.P.C. was recorded, in which she has stated that she had left the house on being beaten by her grandmother and on account of bad treatment by her father and she has shown inclination towards staying with her mother and no allegation of rape or other forcible sexual activity was levelled against the appellant in her statement under Section 164 Cr.P.C. and appellant has been involved in two separate FIRs with regard to the same incident The appellant is behind the bars since 16.01.2021 and material witnesses, including the prosecutrix, have already been examined by the learned trial Court. Lastly, it was contended that provisions of Protection of Children from Sexual Offences Act have been wrongly invoked and there is no documentary evidence available on record to prove the date of birth of the prosecutrix.

4. Per contra, learned State counsel opposes the prayer made by learned counsel for the appellant on the ground that there are serious allegations levelled against the appellant and he has committed rape upon the



prosecutrix, who is below 18 years of age and produced the custody certificate. Same is taken on record.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that appellant is behind the bars for more than 03 years 03 months and 20 days and out of total 32 prosecution witnesses, only 05 have been examined so far. As such, the trial of the case is likely to take long time to conclude. So further incarceration of the appellant without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. Accordingly, the present appeal is allowed and impugned order dated 01.07.2022 passed by learned Additional Sessions Judge, FTSC, Sirsa is set aside. The appellant-Rajender Singh is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

May 07, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No