

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

322

CRA-S No.3039 of 2023
Date of decision: 11.03.2024

Lehamber Siingh ... Appellant

Vs.

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Amit Dhawan, Advocate,
for the appellant.

Mr. Amandeep Singh Samra, AAG, Punjab.

Mr. Pankaj Kundra, Advocate,
for respondent No.2.

MANISHA BATRA, J.

1. The instant appeal has been filed under Section 14 (A) (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short “SC&ST Act”) by the appellant challenging the order dated 06.10.2023 as passed by the Court of learned Additional Sessions Judge, Kapurtahala in Criminal Complaint bearing No.SC 209 of 2021 titled as *Seema Rani v. Lehamber Singh and others*, whereby an application for grant of anticipatory bail as filed by the appellant had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the respondent No.2 has filed the aforesaid complaint

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under the provisions of Section 3 (i) (xii) of SC&ST Act read with Section 376 of IPC as against the present appellant and some other persons alleging that she belonged to Scheduled Caste community. Her marriage was solemnized with one “V” (name withheld). Two children were born out of the wedlock. The appellant who is employed in Punjab Police and is a wrestler, was got introduced to her by her sister by informing that he was an influential person and could help her in gaining Government employment for herself or her husband. The appellant on the assurance of getting them employed in some Government service started visiting her house and maintained physical relations with her. The complainant had even become pregnant and then the appellant with the connivance and participation of co-accused Goni and Prem Kumar even performed marriage with her in a Gurudwara. A male child was born to her on 10.04.2015 out of loins of the appellant. She alleged that the appellant and the co-accused Goni and Prem Kumar secured loan in her name for purchasing car and motorcycle. They had also extracted a sum of Rs.20 lacs from the complainant which was amount of earnest money for sale/purchase of her house. She alleged that when she had demanded back her money, the appellant and the co-accused had extended severe beatings to her and had compelled her to sign some blank papers. By alleging that the appellant who was in a position to dominate the will of the complainant who belonged to Scheduled Caste category, used his position to exploit the complainant sexually by giving assurance to her for providing employment and married her. She alleged that she had

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reported the matter to the police but since no action was taken, therefore, she was constrained to file a complaint.

3. On the basis of the preliminary evidence as recorded by her, the learned trial Court vide order dated 20.10.2022 directed the appellant to be summoned to face trial for commission of offence punishable under Section 3 (i) (xii) of the SC&ST Act and Section 376 of IPC. The appellant had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Kapurthala which was dismissed vide the impugned order by observing that an application for grant of anticipatory bail was not maintainable as per Section 18 of the SC&ST Act.

4. Feeling dissatisfied from the said order, the present appeal has been preferred by the appellant-accused.

5. It is submitted in the grounds of appeal and learned counsel for the appellant has vehemently argued that the impugned order is not sustainable in the eyes of law and is liable to be reversed as while dismissing the application for grant of pre arrest bail, the Court of learned Additional Sessions Judge ignored the fact that the order summoning the appellant as an accused had been passed without applying judicious mind and in an illegal manner. There was no evidence worth the name on record to prove that the appellant had subjected the complainant to rape or had committed any offence under either of the provisions of Section 3 of SC&ST Act. It is submitted that the complainant is major and mature lady having two children. A false story has been created by her alleging

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that she had been sexually exploited against her wishes by the appellant. No specific instance including date, month and year when the appellant had committed rape upon her has been cited either in the complaint or in the statement of the respondent No.2 as recorded before the Court. No legal evidence has been produced on record to this effect. The respondent No.2 is married with one “V” and it is not her version that she has been divorced from her husband. As such, the question of the appellant making any promise to marry her is not made out. There is no evidence on record to substantiate the allegation that the child born to her on 10.04.2015 was biological child of the appellant. Rather, the respondent No.2 and her husband have given the said child in adoption to a couple namely, Sewa Singh Rai and Kulwinder Kaur Rai, residents of Village Badial, District Kapurthala by executing a registered adoption deed dated 05.02.2018 wherein she had mentioned the name of her husband as biological father of the abovesaid child. The custodial interrogation of the appellant is not at all required. The Court of learned Additional Sessions Judge erred in holding that application for grant of anticipatory bail was not maintainable in view of bar created under Section 18 of the SC&ST Act as the provisions of the same were not at all attracted. With these broad 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 given concession of anticipatory bail.

6. Learned counsel for respondent No.2-complainant, on the other hand, argued that there are specific and serious allegations against the

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appellant. He had sexually exploited the prosecutrix for a long time on the pretext of securing a job for herself and her husband as the prosecutrix belonged to Scheduled Caste category, therefore, the provisions of Section 3 (i) (xii) of the SC&ST Act have been attracted and in view of the provisions contained in Section 18 of the SC&ST Act, the application for grant of anticipatory bail is certainly not maintainable. Hence, it is argued that the appeal is liable to be dismissed.

7. I have heard learned counsel for the appellant as well as learned counsel for the respondent No.2 at length and have gone through the record.

8. At the very outset, this Court considers it proper to mention that the respondent No.2-complainant has filed complaint under Section 3 (i) (xii) of SC&ST Act read with Section 376 of IPC as against the present appellant and vide order dated 20.10.2022 (Annexure A-2) he had been summoned to face trial under the aforementioned sections. While passing the impugned order dated 06.10.2023, the learned Additional Sessions Judge observed that since the respondent No.2 belonged to Scheduled Caste category and the appellant has been summoned to face trial under Section 3 (i) (xii) of SC&ST Act, therefore, the bar under Section 18 of this Act was applicable and the benefit of anticipatory bail could not be granted to the appellant as the said provision did not apply to offences under SC&ST Act.

9. There can be no dispute about the fact that Section 18 of the SC&ST Act states that the provisions of Section 438 of Cr.P.C. would

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not apply to persons committing offence under the said Act. However, in the considered opinion of this Court, while passing the summoning order, the learned trial Court as well as while passing the impugned order declining bail, the learned Additional Sessions Judge did not take into consideration the fact that Section 3 (1) (xii) (**wrongly mentioned as Section 3 (i) (xii) in the summoning order as well as in the impugned order**) stands repealed/substituted by way of amendment by Act No.1 of 2016 and at the time of passing of the summoning order as well as the impugned order, no such provision known as 3 (i) (xii) existed in SC&ST Act. As such, the Court which has issued process as against the appellant as well as the Court which has passed the impugned order have certainly committed an error in holding that a prima facie case for commission of offence punishable under Section 3 (i) (xii) of SC&ST Act had been made out. However, at the same time, this Court cannot be oblivious of the fact that as per Section 3 (2) (v) of this very Act, any offence committed under the provisions of Indian Penal Code punishable with imprisonment for a term of ten years or more against a person who is a member of Scheduled Caste and Scheduled Tribe is punishable with imprisonment for life and irrespective of the fact that the appellant has been summoned under a wrong provision, it cannot be ignored that the bar of Section 18 of the SC&ST Act is still deemed to have been applied in view of the provisions of Section 3 (2) (v) of the SC&ST, Act though no order of summoning the appellant under that provision has been passed.

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10. Now coming to the allegations as levelled against the appellant. He is admittedly serving Punjab Police and is alleged to have induced the respondent No.2-complainant to maintain physical relationship with him on the pretext of or by making assurance for providing a job to her husband and herself. She is even shown to have alleged that the appellant had subsequently performed marriage with her and they had started living and a male child was also born out of their alliance. At the stage of considering the plea of the appellant for grant of bail, it is neither appropriate nor feasible for this Court to draw any conclusion, much less to return any finding that the appellant had induced the victim to maintain physical relations with him on the pretext of providing job for herself or her husband and had performed marriage with her or it was a consensual physical relationship. This is also not the stage when this Court can decide the question that the allegations as levelled by respondent No.2 that there was direct nexus between the promise to provide job and their sexual relationship, were false or true. Such a finding and decision has to be given after thorough assessment and evaluation of evidence which is to be led by the parties at the trial. The allegations so levelled make out a prima facie case for commission of offence of rape as against the appellant. It is well settled proposition of law that anticipatory bail should not be granted lightly and in a routine manner. The powers under this section are to be exercised in exceptional and extraordinary circumstances keeping into focus the facts and circumstances of each case. The order of anticipatory bail should not operate as inroad in the

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normal legal procedure of criminal cases by the trial Court. Neither any extraordinary or sparing circumstance entitling the appellant to extend the benefit of anticipatory bail has been made out in this case nor keeping in view the fact that despite being summoned under a wrong provision of SC&ST Act, there still exists material on record to show that the appellant has committed offence of rape punishable under Section 376 of IPC against the respondent No.2 who undisputedly belongs to Scheduled Caste community, the bar of Section 18 of the said Act is attracted in view of provisions of Section 3 (2) (v) of the SC&ST Act, this Court finds that no ground has been made out for allowing the appeal. Accordingly, the same is dismissed.

11. However, it is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

11.03.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No