

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRA-S-3113-2023 (O&M)
Date of decision: 03.04.2024

Sahil ...Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. S. S. Mor, Advocate
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present appeal has been filed under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocity) Act, 1989 (*for short 'the SC/ST Act'*) by the appellant challenging the order dated 15.09.2023 passed by the learned Additional Sessions Judge, Sonipat, whereby an application filed by him under Section 439 Cr.P.C. for grant of regular bail in case arising out of FIR No. 83 dated 01.03.2023, registered under Sections 323, 341, 354, 506 of IPC and Sections 3(1)(W)(1), 3(2)(VA) of SC/ST Act at Police Station Barauda, District Sonipat, had been dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are that a telephonic call had been made by complainant/victim 'S'

(*name withheld*) making allegations of being assaulted by her neighbours to the police, on which, a police party reached at the spot. No written complaint was, however, given by the victim at that time. On 01.03.2023, on receipt of a ruqa about admission of the victim in Civil Hospital, Gohana and then about she being referred to PGI, Khanpur Kalan, the police party again reached there, wherein the victim submitted a written complaint alleging therein that she was a student of B.A. final year. She belonged to Balmiki caste. The present appellant and other persons named in the complaint were influential persons and used to harass her family members as well as herself. She alleged that in the morning of 28.02.2023, she had gone to her second house for the purpose of its cleaning. The appellant along with co-accused entered into the said house at about 09:30 AM and waylaid her and thereafter outraged her modesty. The rescue alarm raised by her attracted her brother and one Nivesh, who reached there. In the meanwhile, the appellant called his parents and brother and other accused called some persons, who reached there armed with wooden sticks and gave beatings to complainant as well as her brother and also extended threats of dire consequences. They also abused them in the name of their caste and fled away from the spot. After registration of FIR, investigation proceedings were initiated. The present appellant, along with co-accused Vikas, Shyam and Suresh, was arrested on 02.03.2023. They suffered disclosure statements and demarcated the place of occurrence. The statement of the victim under Section 164 Cr.P.C. was recorded. Some of the persons, named in the FIR, were found to be innocent during the course of investigation. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented and presently, the appellant, along with co-accused, is facing trial

for commission of aforementioned offences. He had moved three applications seeking grant of regular bail but the same had been dismissed by the trial Court.

3. The present appeal has been filed by the appellant on the grounds and it has been argued by his counsel that the impugned order dated 15.09.2023, whereby the third application filed by the appellant seeking regular bail had been dismissed by the trial Court, is liable to be set aside as the same is not sustainable in the eyes of law. The appellant is in custody since 02.03.2023. He has been falsely implicated in this case. Out of 08 persons named in the FIR, 04 persons were found to be innocent and that showed the falsity of the version of the complainant. The trial is likely to take time. The appellant has no criminal antecedents. Co-accused Suresh, Shyam and Vikas @ Chinni had been extended benefit of regular bail by the trial Court, though the allegations against them were similar to that of the appellant. The subject offences have not been made out against him. Therefore, it is argued that the present appeal deserves to be accepted and the appellant deserves to be given benefit of regular bail.

4. Status report has been filed by the respondent-State, as per which, the complicity of the appellant in the commission of subject offences had been made out from the allegations as levelled in the FIR as well as from the statement of the victim. The same are serious in nature. The material witnesses are yet to be examined. There are chances of the appellant's tampering with the prosecution evidence or absconding, if extended benefit of bail. Hence, it is urged that the present appeal is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable

length and have also gone through the material placed on record carefully.

6. As per allegations, on 28.02.2023, the present appellant, along with two more persons, namely Narinder and Bharat (who were found to be innocent later), had entered into the house of the complainant and had outraged her modesty by intentionally touching her while knowing that the act of touching was of sexual nature and without her consent and had also wrongly restrained her, caused injuries to her and intimidated her. The trial Court, while passing the impugned order dated 15.09.2023, had observed that all the co-accused, who had been extended benefit of bail, were not on similar footing with the case of the present appellant as he had outraged the modesty of the victim apart from assaulting her. It is relevant to note here that as per allegations in the FIR, it was not only the present appellant but two other persons named in the FIR as well who are alleged to have outraged the modesty of the victim. The appellant is in custody since 02.03.2023. The trial is likely to take time. There is no basis for the contention that he may abscond or tamper with the evidence or intimidate the witnesses, if extended benefit of bail. Keeping in view the nature of allegations as levelled against the appellant, the period of his incarceration, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the appellant deserves to be given benefit of regular bail.

7. Accordingly, the present appeal is allowed. 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 the appellant shall not influence/intimidate

or try to meet the victim/complainant, shall not visit her house or try to influence any other witness of the case. In case of violation of any of these conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

9. It is made clear that the observations made hereinabove are only for the purpose of deciding the present appeal and the same shall not be construed as an expression of opinion on the merits of the case.

03.04.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No