

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRA-S No.3178 of 2023
Date of decision: 27.02.2024

Umesh ... Appellant

Vs.

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sanchit Choudhary, Advocate,
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The instant appeal has been filed by the appellant challenging the order dated 08.06.2023 whereby an application for grant of regular bail as filed by the appellant in case arising out of FIR No.124 dated 24.02.2023 registered under Sections 354-A, 354-B, 376, 452, 511 and 376 (2) (n) of IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short “SC&ST Act”) at Police Station HTM, Hisar, had been dismissed by the Court of learned Additional Sessions Judge, Hisar.
2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR was registered on the basis of written complaint filed by the respondent-complainant “S” (name

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withheld) on 24.02.2023 alleging therein that the appellant had been continuously sending her obscene messages, videos, photographs and caste based abuses since January 2023 on her Whatsapp through his mobile phone. She had even blocked his number. She was, however, having the records of those messages by way of screenshots. On 22.02.2023, at about 6:50 PM, the complainant was alone at her house when the appellant entered therein forcibly and started molesting and physically assaulting her. He tore off her clothing, outraged her modesty and tried to commit rape upon her. She raised alarm and thereafter he ran away from the spot. She prayed for taking penal action against him. On her complaint, initially a case under Sections 323 and 506 read with Section 34 of IPC and Section 3 of SC&ST Act was registered. Subsequently, offences under Sections 323 and 506 read with Section 34 of IPC were deleted and offences under Section 354-A, 354-B, 376 and 452 read with Section 511 of IPC were added. The appellant had moved an application for grant of regular bail which was dismissed vide order dated 08.06.2023 and hence, the present appeal has been filed by him.

3. It is submitted in the grounds of appeal and it has been argued by learned counsel for the appellant that he has been falsely implicated in this case due to financial disputes. Infact, the husband of the prosecutrix and the appellant used to be friends. Her husband had taken loan of a sum of Rs.8 lacs from the appellant in the year 2020 that when the appellant asked him to give back his money then instead of doing so, he along with the prosecutrix had extended beatings to him and had made a video of

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him and had been threatening to involve him in false cases. In the year 2021, the appellant had lodged a FIR bearing No.773 dated 17.11.2021 as against the prosecutrix, her husband and other relatives which were pending and the present FIR was an offshoot of the same. It is submitted that after registration of FIR No.773, it was the prosecutrix who herself had approached the appellant for the compromise and it was done with the intention of taking revenge that she induced the appellant to enter into a consensual relationship with him and thereafter, both of them had made physical relations with each other on several occasions in Safari hotel and record regarding this fact was available in the abovesaid hotel. It is argued that the appellant had demanded his money from the prosecutrix in the month of February 2023 and thereafter she had implicated him falsely in this case. It is argued that the allegations on the face of record do not make out any case of rape as against the present appellant. He is in custody since 11.03.2023. If at all, it was a case of consensual relationship between the prosecutrix and himself and all the allegations as levelled in the FIR were false. It is argued that the impugned order is liable to be set aside, the appeal deserves to be allowed and he deserves to be given concession of regular bail.

4. The respondent-State has filed status report as per which, the prosecutrix had recorded statement under Section 164 of Cr.P.C. wherein she had reiterated the allegations as levelled against the present appellant. The allegations against the appellant are serious in nature. The statement of the prosecutrix is yet to be recorded. The complainant during the

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course of investigation had also produced a pen drive containing call recording of the parties as well as containing CCTV footage from wherein the appellant was seen going towards the house of the prosecutrix. It is submitted that keeping in view the gravity of the offences as alleged to have been committed by the appellant, the appeal does not deserve to be allowed.

5. I have heard learned counsel for the parties at considerable length and have gone through the record.

6. On a careful scrutiny of the material placed on record, it has been noticed that the prosecutrix has materially improved/changed her version as given in the FIR, while recording her statement under Section 164 of Cr.P.C. before the police. In the FIR, it was alleged on 24.02.2023, there was no allegation that the appellant had been blackmailing her or had been committing rape upon her by calling her in some hotel. On the other hand, the simple allegations as levelled by her that the appellant was trying to foster personal interaction/relationship with her by sending her obscene/dirty messages, videos, photographs and caste based abuses on her Whatsapp and the further allegation which was made by her that on 22.02.2023 he had entered inside her house while she was alone, had tried to outrage her modesty and then made attempt to commit rape upon her. The version as given in her statement under Section 164 Cr.P.C. is, however, quite different wherein she is shown to have stated that the appellant had lodged a FIR against her family members and herself in the month of November 2021 due to which they

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had to remain confined in jail for a period of five months. She stated that thereafter the appellant had been insisting her to enter into a compromise by meeting her. As per her further version, on his insistence, she had gone to meet him and was taken by him to Safari hotel wherein rape was committed upon her and further stated that thereafter the appellant started blackmailing her and had ravished her for about 5-6 times and it was only thereafter that she stated that on 22.02.2023 also he had made an attempt to commit rape upon her. In this manner, the prosecutrix levelled allegations of her being repeatedly ravished at the hands of the appellant since the year 2021 and about attempt being made by the appellant to commit rape upon her as on 22.02.2023. The appellant has placed on record copies of extract of entries recorded in Safari hotel which reveal that during the month of September and October 2022, the prosecutrix and himself had visited this hotel for four times and had stayed there for considerable period of time on these particular days. All this makes the question debatable as to whether infact it was the case of rape or consensual relationship between the parties.

7. The offence of 'rape' is defined under Section 375 of IPC and sets out certain circumstances. Relevant for the purpose of this case, is the second circumstance that a male subjecting a female to sexual intercourse without her consent, commits offence of rape. As per Explanation-2 of Section 375, 'consent' means an unequivocal voluntary agreement when the women by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in

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the specific sexual act. At this stage, it will also be relevant to refer to Section 90 of IPC, as per which a 'consent' given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, is not consent. It is well settled proposition of law that the 'consent' with respect to Section 375 of IPC, involves an active understanding of the circumstances, actions and consequences of the proposed act. The prosecutrix is a mature lady aged 31 years and married since long. It is highly debatable that when the appellant had lodged an FIR against her family members and herself that had led to their confinement in jail for five months, still she went to meet the appellant not only once but on several occasions. Not only this, she is shown to have stayed with him in a hotel at least for four times for hours together. As such, it is actually questionable that it was a case of consensual physical relationship or of committing rape upon the prosecutrix during the period from November 2021 till the year 2022? It is also a debatable question as to whether either of the provisions of Section 3 of the SC&ST Act have been attracted in this case or not?

8. With regard to the incident that is alleged to have taken place on 22.02.2023, the appellant has been booked for commission of offences punishable under Sections 354-A, 354-B and 376 read with Sections 511 and 452 of IPC. He is in custody since 11.03.2023. The trial is likely to take time. In view of the discussion as made above, in my considered opinion, no useful purpose would be served by keeping the appellant in

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custody any more. His presence can be secured even otherwise also. Therefore, on an overall assessment of the facts and circumstances of the case, I am of the considered opinion that the appeal deserves to be allowed. Accordingly, the same is allowed and the appellant is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court/Illaqa Magistrate.

27.02.2024	(MANISHA BATRA)
manju	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No