

242 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-3208-2023
Date of decision: 19th March, 2024

Arjun

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. P.S. Sullar, Advocate for the appellant.
Mr. Neeraj Poswal, A.A.G., Haryana.
Mr. Tarun Sharma, Advocate for the complainant.

MANISHA BATRA, J (ORAL):-

The present appeal has been preferred by the appellant against the order dated 20.10.2023 passed in a case arising out of FIR No. 59 dated 07.08.2023 registered under Sections 376(2)(n), 506, 509 and 212 of Indian Penal Code, 1860 (for short ‘IPC’) and Section 3 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for brevity ‘SC/ST Act’) on the basis of complaint lodged by respondent No.2 complainant ‘A’ (name withheld) whereby an application for grant of anticipatory bail as filed by the present appellant had been dismissed.

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 complaint lodged by the complainant alleging therein that she came into contact with the appellant who is a native of her village in the month of

October, 2021. They had become good friends. The appellant is serving in army and whenever he visited his village, he used to ask the victim to meet her. Rather he started exerting pressure upon her by alluring and inducing her and by making promise to marry her. He took her firstly to Brara and then to some hotels or other places wherein he made physical relations with her by pressurizing her to do so. Subsequently, in the month of August, 2023, he made a call to her, expressing inability to perform marriage with her by saying that since the victim belongs to scheduled caste and he was of different caste, therefore, marriage between them was not possible. When the victim objected to the same, he started hurling abuses to her, insulted her in the name of her caste and extended threats to her. On these allegations, FIR was registered. Investigation proceedings were initiated. The medical examination of victim was conducted. Her statement under Section 164 of Cr.P.C. was recorded and she also demarcated the places wherein the appellant had taken and ravished her. The father of the appellant was booked for commission of offence punishable under Section 212 of IPC and is presently facing trial. The appellant had filed an application for grant of anticipatory bail before the learned trial Court which had been dismissed by the impugned order which has been challenged before this Court.

3. Learned counsel for the appellant has argued that the relationship between the victim and himself was totally consensual in nature from the last one and half years. He had expressed disinclination to marry the prosecutrix subsequently as he had never made any promise to marry her but the victim who was very much interested in marrying him, had

implicated him falsely in this case. It is submitted by him that neither of the provisions of SC/ST Act has been attracted in this case nor offence under Section 376(2)(n) of IPC has been made out as against him as it was a case of consensual relationship between the parties. It is argued by learned counsel for the appellant that the appellant is ready to join the investigation. His custodial interrogation is not required. While passing the impugned order, the learned Additional Sessions Judge, did not apply his judicious mind and failed to distinguish 'rape' and 'consensual coitus' between the parties. With these broad submissions, it is urged by him that the impugned order is liable to be set aside, the appeal deserves to be accepted and the appellant deserves to be extended benefit of pre-arrest bail.

4. Status report has been filed by respondent-State. Learned State counsel assisted by learned counsel for the complainant has argued that there are specific and serious allegations against the appellant. He repeatedly ravished the prosecutrix who belongs to schedule caste category on the pretext of and by making promise to marry her and subsequently refused to perform marriage with her. He also extended threats to her and insulted her. But for the promise to marry being given by the petitioner, the complainant would never have consented to involve in sexual relationship with him. It is further argued that learned trial Court had rightly dismissed the application of the appellant, keeping in view the gravity of the offences and therefore, it is urged that the appeal does not deserve to be allowed.

5. Counsel for the parties have been heard at considerable length.

6. At the outset, it is profitable to say that the Hon'ble Supreme

Court had succinctly laid down several parameters for granting of anticipatory bail in '*Siddharam Satlingappa Mhetre vs. State of Maharashtra and others : 2011 (1) RCR (Criminal) 126*'. Though by the case cited as '*Sushila Aggarwal Vs. State (NCT of Delhi) AIR 202 Supreme Court 831*', this judgment has been overruled to the extent to which it was observed that no restrictive conditions can be imposed at all, at the time of granting anticipatory bail, however, the observations made in *Siddharam Satlingappa Mhetre*'case (*supra*), discussing the factors and parameters which can be taken into consideration while dealing with the anticipatory bail are still being followed. These observations are as follows:-

"122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i.** *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii.** *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii.** *The possibility of the applicant to flee from justice;*
- iv.** *The possibility of the accused's likelihood to repeat similar or the other offences.*
- v.** *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi.** *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii.** *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and*

concern;

viii. *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

ix. *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

x. *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.*

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.”

7. Going by the contents of the FIR, it is clear that the complainant who is a mature woman and the appellant developed intimacy with each other. They indulged in sexual relations in an unhindered manner for the period from December, 2021 till August, 2023. The prosecutrix has alleged in the FIR that the appellant had promised to marry her and physical relations were established by her only due to that reason and but for the promise to marry being given by the appellant she would not have involved or consented to have sexual relationship with him. Since as per her own version, they were in relationship for about two years, the allegation that she was bestowing sexual favours to the appellant only in the expectancy that he would certainly marry her *prima facie* do not stand to reason and even if the allegations as set out in the FIR are taken on their face value, a debatable question arises as to whether the necessary ingredients for commission of

offences of rape are made out therefrom or not? Though, at the stage of considering a plea for bail it is not feasible for the Court to draw any conclusion as the question that it was a case of 'consensual sexual relationship' or of 'false promise' or 'breach of promise' on the part of the appellant is to be decided by the trial Court after thorough assessment and evaluation of the evidence to be led by the parties, however, in view of the pleas as taken in the FIR itself, the consent by the prosecutrix to sexual intercourse with the petitioner cannot be said to be given under any misconception of fact. The appellant is presumed to be aware of the fact that they belong to different castes and proposal for their marriage was bound to be seriously opposed by family members of either of them. She still does not appear to have resisted the overtures of the appellant, despite this and in fact admittedly, succumbed to them. As such she is shown to have freely exercised a choice between resistance and ascent while knowing the consequences of the act or her maintaining physical relationship with the appellant.

8. Upon the conspectus of the discussion as made above, this Court is inclined to hold that since the very question that it was a case of consensual physical relationship or a false promise made by the appellant with no intention of performing marriage with her is itself debatable at this point, then even the provisions of Section 3(2) (V) of SC/ST Act cannot be considered to be attracted in the peculiar facts and circumstances of the case. The learned trial Court had dismissed prayer for grant of anticipatory bail as filed by the appellant by observing that the above mentioned provisions were

prima facie attracted in this case and therefore, the application for grant of pre-arrest bail was not maintainable in view of the bar created under Section 18 of the SC/ST Act. However, in view of what has been discussed above, but without making any opinion as to the merits of the case, it is held that the order passed by learned trial Court is not sustainable. Accordingly, the same is set aside, the appeal is allowed and the appellant is directed to be granted concession of anticipatory bail subject to compliance of following conditions:

1.

He shall appear before the Investigation Officer/Arresting Officer within a period of ten days from today and furnish bonds to his satisfaction;
2.

He shall join investigation as and when called for;
3.

He shall not directly or indirectly contact the prosecutrix, her family members or any other person/witness acquainted with the facts of the case and in case of receipt of any complaint from the prosecutrix in this regard, the protection granted by this Court shall stand cancelled.
9.

Since the main appeal has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]

JUDGE

19th March, 2024

Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No