

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3311 of 2023 (O&M)

DATE OF DECISION :- 10.01.2024

Husain

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Sushil Sheoran, Advocate for the appellant.

Ms. Ankita Ahuja, AAG, Haryana.

SUMEET GOEL, J. (Oral)

1. Present appeal has been filed against the order dated 12.10.2023 passed by Additional District and Sessions Judge, Fast Track Special Court under POCSO Act, Bhiwani whereby the application of the appellant for grant of regular bail in FIR No.310 dated 07.07.2023, registered for the offences punishable under Sections 323,366-A,506,354-A,109 IPC and Sections 12 and 17 of the POSCO Act and 3(2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station City Bhiwani, District Bhiwani was rejected.

2. As per the case set up in the FIR is as follows :-

“To the Chowki Incharge, Dinod Gate. Sir it is requested that I Jogender son of Prahlad Singh, resident of Balaji Colony, gali no.3, Dinod Road, Bhiwani. I have one daughter whose name is Prachi. Her date of birth is 29.01.2008. She studies in 11th class in Vaishya Model School. Today morning she went from home to school and when she reached at the small gate of Jogiwala temple on the main road, Hussain son of Ramzan of

village Dinod and alongwith one more boy with vehicle was standing there. Hussain threatened my daughter Prachi and forcefully sat her in the vehicle and took her to Sui village. On Seeing my daughter in school dress, the villagers took my phone number from her and informed me. At that time, my neighbor Nauratran Singh son of Natthu Singh was also with me. Nauragan Singh called on 112 from his phone and informed the police. I alongwith my wife and Naurang took the car and reached village Sui. After some time, the police reached there. After that we alongwith my daughter went to police station Bawani Khera. After that when the police went from there, then we went from Bawani Khera to Bhiwani Dinod Gate police chowki. My daughter was very nervous and due to this she was not able to tell anything till now. Now she told me that Hussain teased her on the way and Prachi told me the above said facts. About 5-6 months ago also, he had misbehaved with my daughter but when we informed to his family members, then they apologized and we did not complaint to the police because of reputation of my daughter. Hussain is supported by his brother Hassan and his father Ramzan. Because of this support and instigation of both of them, Hussain is doing such acts again and again. Strict action be taken against them. Hussain threatened to kill my daughter if police take any action. Sd/- Jogender, Applicant Jogender 8198965537 dated 7/7/2023. Police Proceedings:- Today on 07.07.2023, an information was received from Police Station Bawani Khera that a girl in school dress had come to the police station along with her family members after getting information from the villagers of Sui village. This girl had come to village Sui with another boy and it was also reported that the girl studies in Vaishya Model School Bhiwani and she was brought from there itself. On receiving said information, I ASI alongwith L/HC Punita 638/BWN in a government vehicle reached at police station Bawani Khera where the victim girl was found present along

with her parents who said that the girl is afraid and after discussion, the complaint would be given after going to Bhiwani and now after reaching Bhiwani Dinod Gate police chowki, the father of victim girl namely Jogender son of Prahlad resident of Balaji Colony, Dinod Road, Bhiwani has submitted a written complaint after inquiry from his daughter. As per the above said complaint, an offence U/s 363, 366A, 506, 354A, 109 IPC and 12, 17 POCSO ACT is made-out. Thus for the registration of the case, H.C. Nafe Singh No. 947/BWN is being sent to the police station and after registration of the case, case number be informed. The special report of the case be sent to the higher officials and Illaqa magistrate. Since the case is related to the POCSO Act, a competent Investigating officer be appointed for further investigation. I am busy in investigation at Choki Dinod Gate itself. At Chowki Dinod Gate Bhiwani Sd/- ASI Dharambir Choki Dinod Gate Bhiwani Dt. 07.07.2023 at 4.40 PM. Police Station:- On receiving the above said writing through H.C. Nafe Singh 947/BWN in the police station, the above said case was registered. Nakal missal police alongwith original writing is being sent to Investigating officer through H.C. Nafe Singh No. 947/. SI Suman Rani 1016 has been informed through telephone and requested her to reach on the spot for further investigation of the case. The special report of the case is being sent to higher officers and Illaqa Magistrate through email. This case was registered in the presence of SI Umed Singh 438.

3. Counsel for the appellant submits that the appellant is in custody since 07.07.2023 & the challan was presented on 08.09.2023 wherein total 19 witnesses were cited. The learned counsel for the appellant further contends that testimony of prosecutrix as also the complainant stand recorded & no useful purpose will be achieved by keeping the appellant in further incarceration.

4. Learned counsel for the State opposes the prayer made by learned counsel for the appellant stating the appellant is not entitled to the concession as prayed for.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The FIR version does not reflect any sexual assault and the version of the prosecutrix as recorded in the statement under Section 164 Cr.P.C on 7.7.2023 also does not reflect any forcible sexual assault but in the testimony of the prosecutrix, when recorded as PW4 on 30.11.2023, the prosecutrix has alleged sexual assault on her. The contention of learned counsel for the appellant that the case in hand is one of the improvised version will be seen at the time of trial. The appellant has already been in custody since more than six months and there is no other case registered against the appellant herein. No tangible material has been brought on record to indicate likelihood of appellant fleeing from process of justice. Therefore, in my considered opinion, further detention of the appellant is not warranted.

7. In view of the factual matrix of the present case, the instant appeal is allowed. Appellant is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the appellant shall remain bound by the following conditions:-

- (i) The appellant shall not mis-use the liberty granted.
- (ii) The appellant shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The appellant shall not absent himself on any date before the trial.

- (iv) The appellant shall not commit any offence while on bail.
- (v) The appellant shall deposit his passport, if any, with the trial Court.
- (vi) The appellant shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaq Magistrate.
- (vii) The appellant shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the appellant.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

10.01.2024
P.Singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No