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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-3347-2023 (O&M)
Date of Decision : 30.05.2024

Sunita @ Siya

.....Appellant(s)

VERSUS

State of Haryana and Anr.

.....Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. D.S. Virk, Advocate for the appellant.
Mr. Saurabh Girdhar, AAG Haryana for respondent No.1.
Ms. Puneeta Sethi, Advocate for respondent No.2.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred against the order dated 27.10.2023 passed by the learned Additional Sessions Judge, Rewari dismissing the regular bail application under Section 439 Code of Criminal Procedure, 1973 filed in FIR No.308 dated 04.06.2023 under Sections 376(2)(N), 328, 120-B, 386, 354-A, 34 Indian Penal Code, 1860, Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 67-A of the Information Technology Act, 2000 (as per reply Sections 376(2)(N), 120-B, 328, 386, 34 IPC, Section 3 SC/ST Act & Sections 66E and 67A of IT Act) registered at Police Station Model Town, Rewari.

2. The brief facts relevant to the present case are that a complaint was filed by the prosecutrix averring therein that she belonged to the

Scheduled Caste and in December 2021 she met with the co-accused - Tara Chand (husband of the appellant). As her condition was not good at that time, the co-accused - Tara Chand - allured her and called her at the room of his friend where he gave her a cold drink and thereafter the prosecutrix fell unconscious. It is further the allegation that the co-accused - Tara Chand - developed physical relations with her and he captured photo and video of that very incident. It is further the allegation that thereafter he would call her and develop physical relations with her by showing her the said photographs. The appellant herein - Sunita @ Siya - also knew about it. The co-accused - Tara Chand - is also stated to have taken money on different occasions from the prosecutrix. A total of Rs.65,000/- is stated to have been taken by him. It is further averred that the co-accused - Tara Chand - refused to return the money. The husband of the prosecutrix is stated to have died on 19.04.2023. On 01.06.2023 the co-accused - Tara Chand - is stated to have called up the prosecutrix and he told her that his wife, namely, Sunita @ Siya (the appellant herein) had transferred all the photographs and video to her own phone and was demanding Rs.5,00,000/- in order to keep quiet otherwise she would make the photographs and video viral. On the next date the co-accused - Tara Chand - called the prosecutrix and told her that his wife was demanding not only money from her but also from him. It was further averred that Rs.5,00,000/- were given to the appellant herein yet the photographs were made viral by her by sending them to her son, namely, Tanuj, her sister-in-law and landlord and making them viral in the whole village. The statement of the prosecutrix was recorded under Section 164

Code of Criminal Procedure, 1973 wherein she stated that the co-accused - Tara Chand - and the prosecutrix knew each other and would talk to each other and that they would stay in a hotel room and that she had developed physical relations with her own consent and free will. It was further stated by her that one day the co-accused - Tara Chand - had mixed something in her cold drink and she fell unconscious. Thereafter he made a video of her and had also taken money from her. It was further stated that on 01/02.06.2023 she received a phone call from the co-accused - Tara Chand - and he told her that his wife (appellant herein) had taken the photographs from his mobile phone and that the appellant herein had sent the photos and video to the prosecutrix's children, relatives and landlord. She further stated that she did not want any rape case as she had a son and a daughter whom she had to get married. She only wanted action taken for making her photographs and video viral.

3. The learned counsel for the appellant would contend that the prosecutrix in her statement recorded under Section 164 Code of Criminal Procedure, 1973 has categorically admitted that she was in a physical relation voluntarily with the co-accused - Tara Chand - (husband of the appellant herein). It is further the contention that the allegation of making the photographs viral is also incorrect inasmuch as the photographs are alleged to have been sent at 02.19 pm and on the same day at 03.00 pm the present FIR was lodged. It is further the contention that it is actually the appellant who is the victim in the present case as the prosecutrix admittedly had physical relations with her husband (the co-accused - Tara Chand). It is

further the contention that the appellant has already been in custody for a period of 11 months and 23 days and that there is no other case pending against her.

4. *Per contra*, the learned counsel for the State-respondent No.1 has submitted that serious allegations are leveled against the appellant. The learned counsel has filed the custody certificate and as per the custody certificate the appellant has already been in custody for a period of 11 months and 23 days and that there is no other case pending against her.

5. Heard.

6. In the present case in the statement recorded under Section 164 Code of Criminal Procedure, 1973 the prosecutrix has stated that she was in a consensual relationship with the husband of the appellant (the co-accused - Tara Chand). It would be a matter of trial as to whether the photographs were made viral by the appellant herein. As per the custody certificate, the appellant has already been in custody for a period of 11 months and 23 days. The trial is likely to take some time to conclude and no useful purpose would be served by keeping the appellant behind the bars any further.

7. In view of the above and without commenting upon the merits of the case, this Court deems it to be a fit case to grant the concession of regular bail to the appellant. The appellant is directed to be released on bail subject to her furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Additional Sessions Judge (Duty) concerned.

8. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the appellant is found to be misusing the

concession of bail in any manner.

9. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

10. Disposed off. Pending applications, if any, also stand disposed off.

30.05.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO