

Neutral Citation No. 2024:PHHC:072534

2024:PHHC:072534



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

225

CRA-S-3388-2023
Date of decision: 22.05.2024

Surender @ Sheela ...Appellant

Versus

State of Haryana and another ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Gaurav Mohunta, Advocate for the appellant.
Mr. Neeraj Poswal, AAG, Haryana.
Mr. Robin Lohan, Advocate for respondent No.2.

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 Atrocities) Act, 1989 (for short 'the SC/ST Act') by the appellant challenging the order dated 02.11.2023 as passed by the learned Additional Sessions Judge, Hisar whereby the application filed by him for grant of regular bail in case bearing FIR No. 30 dated 03.05.2023, registered under Sections 323, 328, 376(2)(n), 406, 420 and 506 read with Section 34 of IPC and Sections 3(1) (i) (w) and 3(2) (v) of the SC & ST Act, 1989 at Women Police Station, Hansi, District Hansi, 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 against the

Neutral Citation No. 2024:PHHC:072534

appellant on the basis of written complaint filed by the respondent No.2 alleging therein that she belonged to scheduled caste category and was introduced with the appellant by the co-accused Komal who had told her that the appellant who was deputed as Home Guard with Haryana Police could secure a job for her. She alleged that on the pretext of providing her a job, the appellant had initially extracted a sum of Rs. 2,00,000/- from her in the month of May, 2020. Then on the pretext of introducing her to some other persons, he had taken her to a hotel at Hisar wherein she was offered cold drink administered with some intoxicating substance and on consuming the same, she had become unconscious and was ravished by the appellant in that condition. He even prepared objectionable videos of her and threatened to make the same viral and even to kill her, if she disclosed about the said incident to anyone.

3. As per the further allegations, the appellant thereafter started extracting money from the prosecutrix and she was made to part with a sum of around Rs. 10 Lakhs, which were given to the appellant in cash as well as through online transaction. He also repeatedly ravished her by calling her at different hotels/places while extending threats to make her videos viral and blackmailed her. He did not provide her a job even thereafter. She alleged that in February, 2023 also, he raised a demand of Rs. 10 Lakhs and when she refused to succumb to the said demand, then the appellant along with the co-accused extended beatings to her and the appellant insulted her by uttering remarks with regard to her caste. She therefore, prayed for taking action against the appellant and the co-accused. The appellant was arrested on 31.07.2023. He moved an application for grant of regular bail before the

Neutral Citation No. 2024:PHHC:072534

Court of learned Additional Sessions Judge, Hisar which was dismissed vide impugned order.

4. The present appeal has been filed on the grounds and it has been argued by learned counsel for the appellant that the impugned order is not sustainable in the eyes of law and is liable to be set aside due to the reason that he has been implicated in this case on the basis of false allegations. The complainant is involved in honey trapping of innocent persons. She had induced the appellant to enter into a relationship with her. They had been meeting from the last more than three years and there was a consensual relationship between them. The allegations with regard to making demand of money by the appellant for getting her employed, were totally false. The prosecutrix was previously married to one Gourav but left him after obtaining huge amount of money. She had thereafter entered into relationship with one Unesh and had even executed live-in agreement with him which was terminated on 24.07.2023 in lieu of taking money. The complainant impersonated herself as a police official just to blackmail persons. In fact, it was she who was trying to extort money from the appellant and on his refusal had falsely involved him in this case. She had been living in live-in relationship with the appellant. The appellant is in custody since 31.07.2023. Investigation has since been completed. The co-accused Komal has been extended benefit of regular bail. The trial is likely to take time. No useful purpose would be served by further detention of the appellant. The ingredients of the offences punishable under Section 376(2) (n) of IPC as well as different provisions of Section 3 of SC/ST Act have not been made out as against the appellant. With these broad submissions, it is

Neutral Citation No. 2024:PHHC:072534

urged that the impugned order be set aside, the appeal be accepted and the appellant be released on bail.

5. Status report has been filed by respondent No.1-State. Learned State counsel assisted by counsel for the complainant has argued that there are serious allegations against the appellant. There are chances of his intimidating the victim who is yet to be examined and also of absconding, if extended benefit of bail. The appellant had been extracting money from her on the pretext of providing her a job. The conversations as made between them on this point are recorded and a pen-drive was collected during investigation containing the said conversation. He also ravished the victim repeatedly and insulted her by calling her in the name of her caste. Therefore, it is argued that the appeal does not deserve to be allowed.

6. The appellant-accused is alleged to have induced the complainant to part with a sum of Rs. 10 Lakhs on the pretext of securing a job for her in Haryana Police and is further alleged to have repeatedly ravished her and alleged to have made her objectionable videos and captured her pictures and is further alleged to have blackmailed her on the basis of those videos and pictures. As per the allegations further levelled, he insulted the prosecutrix by uttering castes remarks. According to the complainant, it was agreed between the parties that she would be paying the aforesaid amount in installments, and in May, 2020, the appellant had called the prosecutrix for giving an amount of Rs. 2 Lakhs and on his asking when she had gone to bus stand at Hansi, he took the aforesaid amount by representing that he wanted her to be introduced with someone, he took her to a hotel at Hisar, wherein she was offered some cold drink, on consuming which, she

Neutral Citation No. 2024:PHHC:072534

had become unconscious and thereafter he had committed rape upon her. It is also alleged that the appellant had then captured her photographs and videos and started extending threats to make those photographs and videos viral and extracting money from her.

7. The first incident when the prosecutrix was alleged to be subjected to rape by the appellant is quoted to be qua some day in the month of May, 2020. The FIR of this case was lodged on 03.05.2023, i.e. after a gap of about three years, for which, no explanation appears to have been given in the FIR. A perusal of the order passed by the learned trial Court, while allowing the application for grant of bail of co-accused Komal, reveals that no obscene photographs/videos, as alleged in the FIR, were recovered during the course of investigation from the present appellant or the co-accused. The appellant has placed on record Annexure A-1, which is copy live-in agreement, as well as Annexure A-3, which is a copy of affidavit shown to be sworn by the prosecutrix with regard to her live-in relationship with one Unesh Kumar, while affirming that she was already married and having two children. Annexure A-4 is the copy of an agreement shown to have been executed between said Unesh Kumar and the prosecutrix for breaking up their live-in relationship. Certain photographs have also been placed on record by the appellant to show that the prosecutrix, who was already married with one Gourav, was having relations with other persons. Though, the FIR does not make any mention about any consensual relationship between the parties but the case of the appellant is that in fact it was him, who had been induced by the prosecutrix to enter into a consensual relationship and remained in that relationship for a period of about 03 years

Neutral Citation No. 2024:PHHC:072534

and she had been extracting money from him. It is his case that she entrapped him in this case, when he refused to part with any more money. Though no consideration can be given the documents, which have been placed on record by the appellant at this stage to show that the prosecutrix had been maintaining relations with other persons as well and was already married, because this can be proved only by leading evidence before the trial Court, however, simultaneously, this Court is not required to go into the merits of this case at this stage but certain facts, which are apparent from the allegations in the FIR, can certainly be taken into consideration and the same are discussed as hereinafter.

8. The prosecutrix is shown to have lodged the FIR against the appellant after a gap of about 03 years and the explanation given by her for the delay is to the effect that the appellant had captured her photographs and videos and used to extend threats to make them viral, cannot be stated to be probable and natural in view of the fact that no such photographs/videos had been recovered from the appellant or the co-accused. It is also revealed that no documentary proof with regard to giving amount of Rs. 10 Lakhs to the appellant by the prosecutrix had been collected during the course of investigation. Further, there is no material on record to show the commission of offence under Section 328 of IPC by the appellant. The prosecutrix admittedly visited different hotels with the appellant, wherein she was ravished. The prosecutrix being an adult married woman was obviously mature and intelligent enough to understand the significance and the consequences of the inducement allegedly made by the appellant, hence, it would be debatable question as to whether it was a case of consensual

Neutral Citation No. 2024:PHHC:072534

relationship or of rape ? It is also a debatable question as to why she kept quiet for a period of about 03 years for reporting the matter to the police and also kept on giving money to the appellant as claimed by her. The investigation has since been completed. The appellant is in custody since 31.07.2023. The trial is likely to take time. In view of the discussion as made above, I am persuaded to hold that the appellant is entitled to benefit of bail.

9. 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.

10. It is made clear that the appellant shall not influence/intimidate or try to meet the prosecutrix and shall also not try to influence or intimidate any other witness of the case during trial. 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.

11. 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.

[MANISHA BATRA]
JUDGE

22.05.2024
Waseem Ansari

Whether speaking/ reasoned : Yes
Whether reportable : Yes