



CRA-S-3569 of 2024 (O&M) 1

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

222 **CRA-S-3569 of 2024 (O&M)**
DATE OF DECISION :- 17.12.2024

Sunil Kumar **...Appellant**

Versus

State of Haryana and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Aditya Sanghi, Advocate for the petitioner.
Ms. Mahima Yashpal, DAG, Haryana.
Mr. Sanchit Punia, Advocate for complainant-respondent No. 2.

SUMEET GOEL, J. (Oral)

1. Present appeal has been filed under Section 14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order dated 27.09.2024 passed by the learned Additional Sessions Judge, Hisar for grant of regular bail in FIR No.85 dated 11.03.2024, registered for the offences punishable under Sections 376,376(2) n, 506 of IPC and Sections 3(2)(v), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Agroha, District Hisar.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“Statement of AnjuBala wife of Bindar Singh caste Scheduled Caste, Chamar, resident of village Surewala, District Hisar, age 28 years, education 10th pass, stated that I am a resident of the above address. I am doing household work. My husband drives



a vehicle. I have two sons. My husband Bindar went to jail in some case so my husband's friend Sunil Kajla, caste Jatt Resident of village Kajla district Hisar started calling me over phone and he tured me and called me to Agroha turn in month of June 2023 and took me to Manant Hotel Agroha and here he made me to drink fruity and made pe to eat food then took me to the room and raped me against my will and made my video and photo. Then he started calling me repeatedly to meet him and upon my not coming, he started threatening me to get the photo and video viral. I blocked his number and now I have not talked to him since around 5 months. Then he started harassing me by calling me from different numbers. Sunil raped me against my will, he threatened to make my photo and video viral and threatensme to die by writing my name. Strictest legal action may be initiated against Sunil. Now I have recorded my statement to you, I understood it, is correct. SD/-”

3. Counsel for the appellant submits that the appellant is in custody since 20.03.2024. Learned counsel for the appellant has further submitted that the charges were famed on 11.07.2024 but the victim is not repeatedly coming forward to have her testimony recorded as a prosecution witness. In order to buttress his arguments, learned counsel for the petitioner has relied upon the zimni orders dated 02.12.2024, 09.12.2024 and 16.12.2024. Learned counsel for the appellant has further submitted that the complainant has intentionally filed an application (for collecting of voice sample of the accused) on 16.12.2024 to linger on the trial. Learned counsel for the appellant has further argued that there was consensual relationship between the appellant and the victim and there was exchange of money also in this regard & later on the said relationship turned sour on account of which the appellant has been falsely implicated into the FIR in question.

Learned counsel for the appellant has further submitted that the appellant is

**CRA-S-3569 of 2024 (O&M)****3**

a man with clean antecedents. Learned counsel for the appellant has further argued that the offence pertaining to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not made out from the factual matrix of the case as no cast related to insult or injury has been caused to the complainant-respondent No. 2. In this view of the matter, learned counsel for the appellant has prayed for grant of regular bail.

4. Counsel for the State opposed the present petition arguing that the allegations raised are serious in nature and thus the appellant does not deserve the concession of regular bail. Learned State counsel has submitted that the mobile phone of the appellant has been sent to FSL and the ditac report thereof is still awaited.

5. Learned counsel for complainant-respondent No. 2 has vehemently opposed the grant of regular bail to the appellant. Learned counsel for complainant-respondent No. 2 has argued that the testimony of the victim/complainant is yet to be recorded as a prosecution witness and in case the appellant is released on bail there is every likelihood that he would threaten her so as to dissuade her from appearing as a prosecution witness and giving her testimony truthfully. Learned counsel for the complainant has further iterated that objectionable/vulgar videos of the victim are with appellant which have not been recorded by the police during the course of investigation and in case the appellant is released on bail, he would use the same to intimidate the complainant.

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

7. The appellant was arrested on 20.03.2024. After completion of investigation, the challan was presented on 14.05.2024. Total 16 prosecution



witnesses have been cited out of which only 08 prosecution witnesses, who are primarily formal in nature have been recorded. The rival contentions of learned counsel for the parties; as to the whether there was consensual relationship between the appellant and the victim, whether the FIR in question is the outcome of such relationship turning sour; shall be seen during the course of trial. This Court does not deem it appropriate to delve into these rival contentions at this stage lest it may prejudice trial. No tangible material has been brought on record to show that there is likelihood of the appellant absconding from the process of justice or interfering with the prosecution evidence.

The appeal in hand is indubitably a second appeal filed by the appellant for grant of regular bail. The first appeal preferred by the appellant was dismissed as withdrawn on 28.05.2024 wherein the following order was passed :-

“CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

***Present:- Mr. Rajesh Kapila, Advocate and Ms. Himani Kapila, Advocate for the petitioner.
Ms. Priyanka Sadar, AAG, Haryana.***

SUMEET GOEL, J. (Oral)

Mr. Sanchit Punia, Advocate has filed vakalatnama for respondent No. 2. The same be taken on record.

Faced with the situation that the victim is yet to be examined as prosecution witness, learned counsel appearing for the petitioner seeks permission to withdraw the present petition at this stage.

Permission is granted. The present petition is dismissed as withdrawn at this stage.”

***(SUMEET GOEL)
JUDGE***



A perusal of the zimni orders dated 02.12.2024, 09.12.2024 and 16.12.2024 tend to reflect that the complainant/victim is intentionally not coming forward to have her testimony recorded. The procrastination of the trial in question cannot be attributed to the appellant in any manner whatsoever. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in a case of '***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another***' decided in ***Criminal Appeal No.2787 of 2024 arising out of SLP (Crl) No.3809 of 2024***', relevant whereof reads as under:-

"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly. howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution."

Keeping in view the extended custody of the appellant and the non-culmination of trial (fault whereof cannot be saddled upon the



appellant), this Court is inclined to favourably consider the present appeal(second plea for grant of regular bail).

This Court does not deem it appropriate to delve into these rival contentions at this stage lest it may prejudice trial. No tangible material has been brought on record to show that there is likelihood of the appellant absconding from the process of justice or interfering with the prosecution evidence. As per the custody certificate dated 10.12.2024 filed by the State counsel, the appellant has suffered incarceration for 08 months and 20 days & is not not shown to be involved in any other case. In the considered opinion of this Court, further detention of the appellant as an under trial is not warranted.

8. 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 cell-phone number to the Investigating Officer/SHO of concerned Police



CRA-S-3569 of 2024 (O&M) **7**

Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.

(vii) The appellant shall not in any manner try to delay the trial.

9. 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.

10. Ordered accordingly.

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

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

(SUMEET GOEL)
JUDGE

17.12.2024
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No