

CRA-S-3601-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3601-2024 (O&M)
Date of Decision: 27.11.2024

SACHIN BHATIA ALIAS SAHIL

.. Appellant

Vs.

STATE OF PUNJAB AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Saurabh Sharma, Advocate for the appellant.

Mr. Yuvraj Singh Tiwana, Asstt. A.G., Punjab.

Ms. Bisman Mann, Advocate and
Mr. Veer Vikram Singh Mann, Advocate
for respondent No.2.

...

SUMEET GOEL, J. (Oral)

1. Present appeal has been filed under Section 14-A of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 for grant of regular bail to the appellant in case bearing FIR No.175 dated 03.07.2024, registered for the offences punishable under Sections 376 and 506 of IPC (Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (Amendment 2015) added later on) at Police Station Sahnewal, District Ludhiana.

2. The case set up in the FIR in question (as set out by the appellant in the present appeal) is as follows:-

"To the Commissioner of Police, Ludhiana. Subject:- Complaint against (1) Sachin Bhatia allas Sahil son of Vijay Kumar Bhatia (Mob. No.78889-35108, 92168-44136), (2) Anjali Babbar son of Vijay Kumar Bhatia (Mob. No.79860- 30319) for registration of FIR by taking strict legal action for committing rape by deceiving on the pretext of marriage, blackmailing and for extending threats to kill. Sir,



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Respectfully submits that I, Aarti daughter of Ravi Kant am resident of House No.B-313, Genda Colony, Nandpur Sahnewal, Ludhiana respectfully submit before you as under: 1) That I am permanent resident of the above said address. I am a physically disabled girl, my age is 30 years and I have studied MA. My father does catering work and my brother is married. I tutor children at home and I am a household girl. I belong to a simple and respectful family. (2) That the said Sachin Bhatia @ Sahil lives in our Mohalla by leaving two Galies and his age is about 29 years. Sachin Bhatia generally used to visit our house and the said Sachin Bhatia started taking me in his sweet talks and often told me that he likes me a lot and wants to spend his life with me. The said Sachin Bhatia used to tell me that he will marry me and keep me happy for the rest of my life and by thinking about my future, I got convinced from the sweet words of the said Sachin Bhatia alias Sahil. (3) That I had fully believed the words of the said accused No.01 and following which, he had developed physical relations with me on the pretext of marrying me and he also clicked my photographs through his mobile phone. Said accused No.01 also put Mangal Sutra and Sindhur in my neck to prove the truth to marry me, so that I could believe the said Sachin Bhatia. (4) That it is worthwhile to mention here that earlier I had an engagement, which the said accused No.01 got broken by talking about marrying me. When in this regard, I talked to accused No.2 i.e. sister of accused No.1, who told me not to marry anyone else, as her brother will solemnize marriage with me only and accused No.02 is also fully Involved in the said offence. (5) That in the meantime, when I was talking about marriage with the said Sachin Bhatia alias Sahil, he kept avoiding me and I told the said accused No.01 that as long as he does not marry me, I will not make any relationship with him. Above said Sachin Bhatia alias Sahil only to fulfill his lust, he started blackmailing me and threatening me that if I do not listen to him, he will upload my photos on the Internet and the said accused kept on raping me by blackmailing me. (6) That because the business of the said accused was big, they often threatened and blackmailed me. When my mother was not at home, the said accused No.01 used to come to my house and blackmailed me by talking to me about Court marriage and used to rape me. In the meantime, when I got pregnant, I told the said accused No.01 about this fact, the said accused No.01 said that we cannot give birth to this child yet and he gave me a pill to consume, due to which, my miscarriage occurred. (7) That now when I said to the said accused No.01 to solemnize marriage with me, said accused No.01 asked me in threatening words that he is not going to marry me and he was only doing time pass with me and he cannot marry me, so I can do whatever I want, as I cannot harm him, as he has high up links with senior police officers and politicians. (8) That in this way, accused No.01 has committed rape upon me by blackmailing me and on the contrary, I am being harassed by threatening to kill me and the said accused No.01 is also threatening me that if I try to file any complaint against him anywhere, he will kill me and my whole family. Said accused are constantly harassing me and forcing me to commit suicide by extending threats. I and my family are apprehending danger to our life and property from the hands of said accused and if in future, if any untoward incident occurs to me and my family members, then said accused will be responsible for the same. So, I humbly request before you that FIR be registered by Initiating stern legal proceeding against accused No.01 for committing rape upon me on the pretext of marriage, for blackmailing and extending threats to kill and his sister i.e. accused No.02 for helping accused No.01, and justice be delivered to me. Thanking you. Complainant Aarti. Police proceeding: A complaint bearing PGD No.360568, Complaint No.35980 dated 07.06.2024 moved by Aarti daughter of Ravi Kant, resident of House No.B-313, Genda Colony, Nandpur, Ludhiana was received by ASI Sadhu Singh for conducting enquiry."

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3. Learned senior counsel for the appellant has argued that the appellant is in custody since 18.07.2024. Learned senior counsel for the appellant has further argued that the perusal of the FIR in question would reflect that there was consensual relationship between the appellant and the victim. Learned senior counsel for the appellant has submitted that the promise of marriage, allegedly extended by the appellant, could not get fructified due to supervening circumstances and thus the offence of Section 376 of IPC etc is not made out against the appellant. Learned senior counsel for the appellant has iterated that the complainant is an educated lady aged about 30 years and hence it cannot be said that she was a gullible victim. In order to buttress his arguments, learned senior counsel has relied upon the *ratio decidendi* of a judgment passed by this Court in a case of '**Sanjay Kumar Sharma Vs. State of Haryana and Another**'; **2024:PHHC:080609**, relevant whereof reads as under:

"14. As a sequel to the above said discussion, the following postulates emerge:

I. The Consent of a woman; in context of Section 375 of IPC, 1860; must involve an active and reasoned deliberation towards the proposed act.

II. For a court to hold that the "Consent" of a woman was marred by 'misconception of fact' on account of a promise to marry; it must emerge from the factual conception of a given case that, firstly such promise was false from inception itself with no intention to upkeep it and secondly, such false promise must be of immediate relevance in terms of time or bear a direct nexus to the woman's decision to engage in physical relation(s).

III. In a case pertaining to rape, based upon promise to marry and/or involving extra marital relationship (wherein the man or woman or both are married to other persons), the Court ought to take into account the entirety of facts/circumstances of such case, including but not limited to, comparative age of accused and victim; educational, social and economic background of the accused and the victim; the nature of professional work/avocation being undertaken by accused and victim in their respective lives etc. It is neither axiomatic nor fathomable to lay any exhaustive set of guidelines in this regard as every case has its own peculiar factual matrix."

Learned senior counsel for the appellant has further iterated

that the allegations pertaining to the Scheduled Caste and Scheduled Tribe

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(Prevention of Atrocities) Act, 1989 are not made out from the factual matrix of the *lis* and the same have been made in the FIR so as to lend gravity thereto. Learned senior counsel for the appellant has further argued that the investigation in the case is already complete and challan has been filed & culmination of the proceedings will take its own time. Thus, regular bail is prayed for.

4. Learned State counsel has filed compliance report dated 26.11.2024 in the Court today and contends that the impugned order has been passed considering the totality of the circumstances of the case. All the grounds raised by the appellant have been considered and dealt with in their proper perspective by the trial Court. Therefore, the appellant is not entitled to the concession as prayed for.

5. Learned counsel for the complainant has vehemently opposed the grant of regular bail to the appellant by arguing that the allegations made against the appellant are specific and serious in nature & hence he ought not to be granted the concession of regular bail. Learned counsel for the complainant has argued that the complainant was even attacked by the sister of the present appellant for which she had made a complaint but the said complaint has been wrongly closed/filed by the police. Learned counsel for the complainant has iterated that in case the appellant is released on bail, there is all the likelihood that he will tamper with the prosecution witnesses as also intimidate the complainant. Hence, it has been urged that the appeal in hand be rejected.

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

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7. The appellant was arrested on 18.07.2024 whereinafter investigation was carried out and challan was presented on 29.08.2024. Total 12 prosecution witnesses have been cited and the charges are yet to be framed in the matter. It is, thus, indubitable that conclusion of the trial will take its own time. The rival contention of the learned counsel for the parties; as to whether there was any promise of marriage to establish physical relation; whether such promise would result in invoking of offence under Section 376 of IPC since the alleged promise to marry could not get fructified due to alleged supervening circumstances; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the appellant absconding from the process of justice or interfering with the prosecution evidence. As per custody certificate dated 26.11.2024 filed by learned State counsel, the appellant has suffered incarceration for more than 04 months and 07 days & is not shown to be involved in any other case. Suffice to say further detention of the appellant as an undertrial is not warranted in the facts and circumstances of the present case.

8. To allay any apprehension on behalf of the complainant/respondent No.2 regarding her security, it is directed that in case she seeks police protection by making an appropriate application/representation before the Commissioner of Police, Ludhiana; the said officer shall take a ratiocinated decision thereupon within three working days and take further action as required in law.

9. In view of totality of factual matrix of the present case, the instant appeal is allowed. Appellant is ordered to be released on regular bail

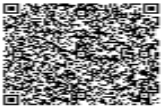
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on his furnishing bail/local surety bonds to the satisfaction of the concerned learned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned learned CJM/Duty Magistrate, the appellant shall remain bound by the 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/Illaqa Magistrate.
- (vii) The appellant shall not in any manner try to delay the trial.

10. 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.

11. Ordered accordingly.



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12. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
13. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

27.11.2024
Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No