



211

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-3682-2023 (O&M)  
Date of Decision : 23.08.2024

Ankit ... Appellant(s)  
Versus  
State of Haryana and Anr. ... Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Shreenath A. Khemka, Advocate for the appellant.  
Mr. Pankaj Midha, Addl. AG Haryana for respondent No.1.  
Mr. Pankaj Bali, Advocate for respondent No.2.

**ALKA SARIN, J. (Oral)**

**CRM-52257-2023**

1. This is an application for condonation of delay of 83 days in filing the appeal.

For the reasons stated in the application, delay of 83 days in filing the appeal is condoned. CM stands disposed off.

**CRA-S-3682-2023**

1. The present appeal has been preferred by the appellant herein challenging the impugned order dated 17.06.2023 whereby the bail application filed by the appellant in FIR No.322 dated 10.07.2022 under Sections 363, 366-A of the Indian Penal Code, 1860 and 4 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(r), 3(1)(s), 3(II)(VA), 3(II)(v), 3(1)(w), 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, has been dismissed. Earlier petition being (CRM-M-35183-2023) was filed by the appellant herein and

on 20.11.2023 the same was dismissed as withdrawn with liberty to file afresh with better particulars as an appeal is maintainable.

2. Brief facts relevant to the present *lis* are that the complainant, who is the father of the prosecutrix, filed a complaint on 10.07.2022 wherein he stated that he belonged to Scheduled Caste and he had three daughters. On the said date, he and his wife had gone for labour work. At about 2.00 pm when his wife came back home and asked his younger daughter about his elder daughter, she informed that she might have gone to fetch ration from the shop. He and his wife went looking for their daughter. His wife informed him that for the last few days, Ankit (appellant herein) was stalking his daughter. When he and his wife made an inquiry about Ankit (appellant herein), he was also not found at his house. When they inquired about his whereabouts from his brother, he started hurling caste related abuses and stated that he did not know whereabouts of his daughter. It was further alleged in the complaint that Ankit (appellant herein) had enticed and taken away his daughter. It was further prayed that his daughter be traced and legal action be taken against the accused-persons. On the basis of the same, FIR No.322 dated 10.07.2022 under Sections 363, 366-A of IPC and Section 3 of SC/ST Act was registered. Subsequently, after investigation, Sections 3(1)(r), 3(1)(s), 3(II)(va) and 3(II)(v) of SC/ST Act were added in the FIR. On 22.07.2022 accused, Sachin, was arrested and his disclosure statement was recorded. During investigation, it was found that Ankit (appellant herein) was aided by Sachin in the commission of an alleged crime and Section 216 IPC was added in the FIR. On 23.07.2022 the present appellant was joined in the investigation and he was released on police bail.

On 24.07.2022 the victim was recovered and her statement was recorded under Section 164 of the Code of Criminal Procedure, 1973 and she was medically examined. She was also got counselled by CWC, Karnal. Accordingly, Section 4 of POCSO Act and Sections 3(1)(w), 3(2)(v) of SC/ST Act were added in the FIR. On 26.07.2022 the present appellant was arrested and his medical examination was also conducted.

3. Learned counsel for the appellant would contend that the DNA Report has been prepared after a gap of almost 2 years and relying on the judgments in the cases of **Premjibhai Bachubhai Khasiya Vs. State of Gujarat & Anr. [2009 (4) RCR (Criminal) 186]** and **Prakash Nishad @ Kewat Zinak Nishad Vs. State of Maharashtra [2023(3) RCR (Criminal) 297]** has argued that the delay in sending the samples being unexplained, a possibility of contamination and diminishment in value cannot be reasonably ruled out. It is further the contention of the learned counsel that there are discrepancies in the statements made by the prosecutrix before the Police, before the CWC, in her statement under Section 164 CrPC and her statement before the Medical Officer and the Trial Court.

4. *Per contra* the learned counsel for the complainant/respondent No.2 has contended that there are serious allegations against the appellant herein and that the prosecutrix as well as her parents, who have since been examined, had fully supported the case. The learned counsel has further contended that the discrepancies pointed out are minor in nature and that the consistent stand of the prosecutrix is that she was forcibly taken by the appellant herein and was subjected to rape.

5. Learned counsel for the State has referred to the status report. It was stated that semen was detected in the FSL Report and the same was sent for DNA testing. Thereafter a second status report was filed. In the interregnum, DNA Report has also been received. As per the DNA report, DNA profile obtained from the source i.e. source of item No.2 (swab) is matching with the DNA profile of the source of item No.6 i.e. the blood sample of the present appellant.

6. I have heard the learned counsel for the parties.

7. In the present case the prosecutrix had gone missing on 09.07.2022 and on 10.07.2022 a missing report was lodged by the father of the prosecutrix. Subsequently, the victim was recovered on 24.07.2022 and her statement was recorded. The victim has been consistent in her stand that she was forcibly taken by the appellant herein and that she was raped. The said factum now stands corroborated by the DNA Report also. The argument of the learned counsel for the appellant that the DNA Report cannot be relied upon in view of the fact that the report has been received after a gap of two years cannot be gone into at this stage. Both the judgments in the cases of **Premjibhai Bachubhai Khasiya (supra) and Prakash Nishad @ Kewat Zinak Nishad (supra)** relied upon by the learned counsel for the appellant are not cases where the DNA Report was being considered at the stage of grant of bail. Admittedly, the victim as well as her parents have fully supported the case of the prosecution. It is a matter of record that the appellant herein is the neighbour.

8. Keeping in view the totality of circumstances, this Court does not deem this to be a fit case for grant of bail. The appeal being devoid of

any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.08.2024  
Yogesh Sharma

( ALKA SARIN )  
JUDGE

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