

231 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-3652-2023
Date of decision: 11th March, 2024

Kanta @ Muskan

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Parminder Singh, Advocate for the appellant.
Mr. Neeraj Poswal, A.A.G., Haryana.

MANISHA BATRA, J (ORAL):-

The present appeal has been filed by the appellant challenging the order dated 22.11.2023 passed by the Learned Additional Sessions Judge/Fast Track Special Court(POCSO), Karnal case arising out of FIR No. 172 dated 19.06.2023 registered under Section 365 and 120-B of Indian Penal Code, 1860 (for short ‘IPC’) and Section 3 (2) (va) of Scheduled Castes and the Scheduled Tribes (Prevention of atrocities) Act, 1989 (for brevity ‘SC/ST Act’), Police Station Ram Nagar, Karnal, whereby an application for grant of regular bail moved by the appellant, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR was initially registered under Section 365 of IPC on 19.06.2023 on the basis of complaint lodged by ‘S’

(name withheld) mother of the victim 'L' (name withheld) alleging therein that the victim who was her fifteen years old daughter, had gone missing since the last evening and she could not find her even after making search for her. Investigation was initiated. The victim was got recovered from Sainik Rest House, Ambala on 20.06.2023. After recording her statement, she was left at One Stop Centre, Karnal. Her statement under Section 164 of Cr.P.C. was recorded on 23.06.2023, wherein she stated that due to being taunted by her sister, she had left her house at her own accord and one girl had taken her to Ambala and Chandigarh. The said girl got booked a hotel and called a boy in that hotel who had attempted to commit wrong with her. As per the further allegations, the victim refused to get her medical examination conducted. Her custody was handed over to her legal guardians. Offence under Section 4 read with Section 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') was added. The CCTV footage of the hotel sky wherein the victim had been taken to was collected and the present appellant was arrested on 24.06.2023. She was interrogated and suffered disclosure statement admitting her involvement in abetting the commission of offence of sexual harassment/attempt to rape upon the victim. Offences under Section 12 of POCSO Act were deleted and offence under Section 18 of the said Act was added. During investigation, the victim disclosed that the co-accused Rajesh Malik had been called by the appellant in the hotel and had made attempt to commit rape upon her. He could not be, however, arrested. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented against the

appellant after adding offences punishable under Sections 3(1)(w)(i), 3(2)(v) (a) of SC/ST Act as the victim belonged scheduled caste category. The appellant had filed an application for grant of bail before the concerned Court which had been dismissed vide the impugned order.

3. It is argued by learned counsel for the appellant that she has been falsely implicated in this case. The victim had left her house at her own accord and had not been taken away or abducted by the appellant. The victim had not got herself medically examined. No call detail record connecting the appellant with the victim had been collected during the course of investigation. The room that had been booked in sky Hotel was infact booked by misusing the ID card of the appellant as the CCTV footage collected from that hotel did not show the presence of appellant with the victim at all. The appellant has infact been thrown out of her matrimonial house. She is suffering from mental ailments and is under treatment and is not even capable of taking any defence, being depressed . As per the version of the co-accused, the appellant and victim had come to Zirakpur for securing some job for the victim. It is also argued that infact, the co-accused Rajesh had called the appellant herself on the pretext of providing some job and had tried to do wrong act with her. No case for commission of offence under the provisions of Section 3 of SC/ST Act is made out against her. Her custodial interrogation is no more required. The trial is likely to take time. No useful purpose would be served by detaining her in custody. Therefore, it is argued that the appeal deserves to be allowed.

4. *Per contra*, learned State counsel has argued that there are

serious and specific allegations against the appellant. She connived with the co-accused in making attempt to commit offence of sexual assault upon the victim who is a minor girl of fifteen years of age and is also alleged to have taken her to hotel sky on the pretext of arranging some job to her. It was only on account of the victim's crying that the co-accused remained unsuccessful in ravishing the minor victim. The participation of the appellant in abetting commission of subject crime is *prima facie* made out. There is nothing on record to show that she is having any kind of mental ailment. The provisions of the SC/ST Act are fully attracted. The trial has commenced and there is nothing on record to show that there would be any undue delay in conclusion of the same. Therefore, it is argued that the appeal does not deserve to be allowed.

5. I have heard learned counsel for the appellant as well as learned State counsel at considerable length and have gone through the record carefully.

6. The appellant-accused is alleged to have kidnapped/abducted the victim with intent to cause her to be secretly and wrongfully confined and is further alleged to have made attempt/abetted the commission of offences punishable under Sections 4 and 12 of the POCSO Act. Though she is alleged to have committed offences punishable under Section 3(1) (w) (i) and 3(2)(va) of SC/ST Act, however, in my considered opinion, the aforementioned provisions of SC/ST Act cannot be *prima facie* stated to be applicable in the present case, in view of the fact that Section 3(2) (va) of SC/ST Act is made out only against a person who commits any offence

specified in the schedule of the said Act, against a person knowing that such person is a member of schedule caste or tribe. Neither the offence punishable under Section 365 of IPC nor the offences punishable under Sections 4 and 12 of POCSO Act are specified in the schedule of the SC/ST Act. It will be appropriate to mention here that Section 3(2) (v) of the SC/ST Act makes commission of any offence punishable under IPC with a member of schedule castes or schedule tribe community which is punishable with imprisonment for a term of 10 years or more. The offence under section 365 is punishable for imprisonment upto seven years only and offence under Section 120-B of IPC is not a substantive offence. So far as the offence under Section 3(1)(w) (i) is concerned, the allegations as levelled against the appellant do not make out any case for commission of offence punishable under the above said Section against her also. Therefore, I have no hesitation to hold that the provisions of SC/ST Act for which the appellant has been booked are not *prima facie* attracted against her.

7. Proceedings further, it may, however, be mentioned that it is still apparent from the allegations as levelled against the appellant that she entered into a conspiracy with the co-accused Rajesh (who is yet to be arrested) and in pursuance of that conspiracy, induced the minor victim to go alongwith her to some hotel wherein attempt had been made with the victim by the co-accused to ravish her/to commit the act of penetrative sexual assault and she was sexually harassed as well. These allegations themselves are serious in nature. The appellant has tried to take a plea that she is not a person of stable mind and is taking treatment. Her counsel has placed on

record a report shown to be given by doctors of Kalpna Chawla Govt. Medical College, Karnal, Department of Psychiatry. However, on a perusal of this document, it is revealed that the doctors had themselves opined that no conclusive report could be given about the mental status of the victim due to lack of detailed history and detailed psycho diagnostic assessment due to non-availability of clinical psychologist in the hospital. Therefore, this report does not serve any purpose for the appellant.

8. In view of the discussion as made above, it is held that though the offences under the provisions of SC/ST Act for which the appellant has been booked do not appear to be *prima facie* made out against her but the allegations against her are still quite serious in nature as the commission of offences punishable under the provisions of IPC and POCSO Act are *prima faice* made out against her. With these observations, but without meaning to make any comment upon the merit of the case, it is held that learned trial Court had rightly declined the prayer of the appellant for grant of regular bail and therefore, no reason has been made out for setting aside the order so passed and allowing the appeal. Accordingly, the same is dismissed.

9. Since the main appeal has been dissmised, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

11th March, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No