

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

229

CRA-S-3911-2023 (O&M)
Date of decision: 18.04.2024

Atul Khan

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sunil K. Tandon, Advocate
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. CRM-9524-2024

Allowed as prayed for, subject to all just exceptions. Statement of the
victim is taken on record as Annexure P-7.

2. CRA-S-3911-2023 (O&M)

This instant appeal has been filed under Section 14-A(2) of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
(for short 'SC/ST Act) by the appellant against the order dated 09.11.2023,
passed by learned Additional Sessions Judge, Ambala, whereby the
application filed by the appellant for grant of regular bail in case arising out of
FIR No. 43 dated 10.02.2023, registered under Sections 323, 376(2)(n), 506 of

Neutral Citation No. 2024:PHHC:052252

IPC and Section 3(2)(v) of SC/ST Act [Sections 201, 313 of IPC and Section 3(2)(va) of SC/ST Act were added later on] at Police Station Barara, District Ambala, had been dismissed.

3. Brief facts relevant for the disposal of the present appeal are that the aforementioned FIR was registered on the basis of a written complaint filed by complainant/respondent No. 2 'M' (*name withheld*) on 10.02.2023 alleging therein that on 10.02.2023, the appellant had committed rape upon her and had also told her thereafter that he would marry her. Subsequently, she came to know that he belonged to Muslim community. She was impregnated by the appellant and on coming to know about this fact, she insisted him to marry her but he bluntly refused to do so and also tried to administer some medicine to her for getting her pregnancy aborted. After registration of FIR, investigation proceedings were initiated. Respondent No.2/prosecutrix recorded her statement under Section 164 Cr.P.C. disclosing that in fact she was in live-in-relationship with the appellant and she did not want any action against him as the appellant was going to marry her. On the basis of her statement, cancellation report was prepared by the police. However, subsequently, she again filed a complaint to higher police authorities on 13.07.2023 reiterating the same allegations. Her statement under Section 164 Cr.P.C. was recorded, wherein she stated that she had earlier recorded her statement in favour of the appellant on the assurance given by him to marry her and that her child in womb was got forcibly aborted by the appellant. The appellant was arrested on 05.08.2023. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the appellant is facing trial for commission of

Neutral Citation No. 2024:PHHC:052252

aforementioned offences. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide impugned order dated 09.11.2023.

4. Learned counsel for the appellant has argued that the appellant and respondent No. 2 were in love with each other and it was only on account of the resistance of the parents of the prosecutrix, due to appellant's belonging to some other religion, that their marriage could not be performed and he had been falsely implicated in this case. It is further argued that both of them still want to marry each other and are still in consensual relationship. The prosecutrix has not supported her version as given in the FIR lodged by her while recording her sworn deposition before the trial Court. The appellant is in custody since 05.08.2023. No useful purpose would be served by detaining him in custody anymore. Therefore, it is argued that the appeal deserves to be accepted and the appellant deserves to be given benefit of regular bail.

5. *Per contra*, learned State counsel has submitted that keeping the gravity of the allegations as levelled against the appellant, he does not deserved to be given benefit of bail. Hence, it is urged that the appeal is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

7. As per the allegations, the appellant had repeatedly ravished the prosecutrix on the pretext of performing marriage with her and subsequently refused to perform marriage with her. There are also allegations of her being assaulted and criminally intimidated at the hands of the appellant. However, a perusal of the testimony of the prosecutrix, who is an adult female aged about

22 years, recorded before the trial Court, it is revealed that she did not implicate the appellant in the commission of rape. Rather, while stepping into the witness box, she stated that she was living in live-in-relationship with the appellant. He had never made any remarks relating to her caste and had not committed any type of atrocity upon her. In this manner, she is shown to have taken a U turn and has totally exonerated the appellant in the commission of subject offences. Keeping in view the nature of evidence which has come on record in the form of testimony of the prosecutrix, who is a star witness in the case, the period of incarceration of the appellant and the attendant facts and circumstances of the case, I am of the considered opinion that the appellant deserves to be given concession of regular bail.

8. Accordingly, the present appeal is allowed and the impugned order dated 09.11.2023 is set aside. The appellant is directed to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

9. It is made clear that the observations made herein above 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.

18.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>