



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

CRA-S-3900-2024 (O&M)

Date of Decision:-24.03.2025

Shubham

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Tarun Sharma, Advocate for the appellant.

Mr. Surinder Kumar Dagar, DAG, Haryana.

JASGURPREET SINGH PURI J.(Oral)

1. The present appeal has been filed for setting aside the order dated 09.05.2024 passed by learned Additional Sessions Judge/Fast Track Special Court (POCSO), Karnal.

2. Learned counsel appearing on behalf of the appellant submitted that the appellant has been in custody for 1 year, 08 months and 10 days and the trial has already commenced and the prosecutrix has already been examined. He submitted that this is a case where the allegations against the appellant are that he enticed away the daughter of the complainant, who was stated to be 15½ years old at the time of the occurrence, but in fact, she was more than 17 years of age. He also submitted that the appellant has been falsely implicated in the present case, particularly in view of the fact that initially, the prosecutrix did not permit her medical examination to be conducted. However, she was medically examined on 08.04.2023, and as per the forensic report, semen was detected on the underwear of the prosecutrix, but it did not match the DNA of the appellant. In fact, as per her statement



recorded under Section 164 of Cr.P.C. before learned Magistrate vide Annexure P-2, she categorically stated that she was forced to do sex by her own fufa (uncle), namely Sandeep Kumar. She informed her mother and grandmother about this, but no action was taken against him. She specifically stated that the present appellant did not commit any wrongful act with her. He further submitted that the appellant has been falsely implicated in the present case in order to protect the uncle of the prosecutrix, particularly in view of the fact that the DNA of the appellant did not match the sample. Moreover, the aforesaid uncle of the prosecutrix, against whom a specific role was alleged by the prosecutrix herself in the statement recorded under Section 164 Cr.P.C., has not even been arraigned as an accused in the present case by the police. He submitted that, considering the aforesaid facts and circumstances, the appellant may be considered for the grant of regular bail and the order dated 09.05.2024 passed by learned Additional Sessions Judge/Fast Track Special Court (POCSO), Karnal, may be set aside.

3. So far as the allegations pertaining to the provisions of the SC/ST Act are concerned, he submitted that the only reason for invoking the SC/ST Act was that the prosecutrix belongs to the SC/ST category, but that itself cannot be a ground for invoking the aforesaid provisions. No specific allegations have been levelled against the appellant, and the mere fact that the prosecutrix belongs to the SC/ST category does not mean that the aforesaid provisions can be invoked.

4. On the other hand, learned State counsel, on instructions from SI Randhir Singh, submitted that, insofar as the custody of the appellant is concerned, it is correct. He submitted that as per the statement made by the



prosecutrix under Section 164 Cr.P.C. before learned Magistrate, she attributed the offence only to her fufa (uncle) and stated that, so far as the present appellant is concerned, he has not done anything wrong with her. He also submitted that, as per the forensic report, semen was detected on the underwear of the prosecutrix, but the DNA of the semen did not match with the DNA of the appellant. He, however, submitted that during the course of the trial, when the prosecutrix was examined, she supported the prosecution's version, and therefore the appellant is not entitled to the grant of regular bail.

5. I have heard the learned counsels for the parties.

6. The victim-prosecutrix was impleaded as a party in the present case as respondent No. 2, and notice was also issued. Respondent No. 2 was served, but nobody appeared on her behalf, even on the last date of hearing. On the last date of hearing, i.e., 23.01.2025, the following order was passed:

“As per the report of Registry, respondent No.2 has been served, however none has caused appearance on behalf of respondent No.2.”

In the interest of justice, adjourned to 24.03.2025.”

7. Even today, nobody has appeared on behalf of respondent No. 2. The custody of the appellant is stated to be 1 year, 8 months and 10 days. As per the allegations against the appellant, the appellant enticed away the prosecutrix, and when her medical examination was conducted as per both the learned counsels for the parties, the semen was detected. However, it did not pertain to the appellant, as his DNA did not match. At the same time a perusal of the statement made by the prosecutrix under Section 164 Cr.P.C. vide Annexure P-2 would show that she has levelled categorical allegations against her own fufa (uncle) and in clear terms stated that the appellant has not done



anything wrong with her. The DNA also did not match with the DNA of the appellant. The prosecutirx has already been examined. Furthermore, it is neither the case of learned State counsel nor it has been argued that if the appellant is released on bail, he may abscond, flee from justice, influence witnesses, or tamper with evidence. Therefore, considering the aforesaid facts and circumstances of the present case, this Court is of the view that after perusing the statement made by the prosecutrix under Section 164 Cr.P.C. before the learned Magistrate vide Annexure P-2, and in light of the long custody of the appellant, this Court deems it fit and proper to set aside the impugned order dated 09.05.2024 and grant regular bail to the appellant.

8. Consequently, the present appeal is allowed. Order dated 09.05.2024 passed by learned Additional Sessions Judge/Fast Track Special Court (POCSO), Karnal, is hereby set aside. The appellant shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Duty Magistrate concerned.

9. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present appeal only.

(JASGURPREET SINGH PURI)
JUDGE

24.03.2025

shweta

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No