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

Sr. No.283

CRA-S-1745-2024 (O&amp;M)

Date of decision : 19.03.2025

Arvind @ Rinku @ Rajat

..... Appellant

VERSUS

State of Haryana and another

..... Respondents

**CORAM: HON'BLE MS. JUSTICE KIRTI SINGH**

Present: Mr. Kr. Vikas P. Singh, Advocate, for the appellant.

Mr. Anmol Malik, DAG, Haryana.

Mr. Manuj Nagrath, Advocate, for respondent No.2.

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**KIRTI SINGH, J. (Oral)**

The present appeal has been filed for grant of regular bail to the appellant, by way of challenging the impugned order dated 16.04.2024 passed by learned Additional Sessions Judge, Hisar vide which the application in FIR No.357 dated 16.05.2023, under Sections 376(2)(n), 323, 354-D, 377 & 506 IPC and Section 3(I)(s) of SC & ST Act (Section 3(I)(w)(ii) of SC & ST Act was added later on), registered at Police Station City Hisar was dismissed.

2. Succinctly put, allegations leveled against the appellant, as culled out from the FIR are that the appellant represented to the prosecutrix that he had a roaring business and proposed her for marriage. On 05.12.2019, the appellant took her to MG Club, Hisar and forcibly committed rape upon her. Thereafter, appellant kept establishing physical relations with the prosecutrix on the pretext of marriage. When the prosecutrix objected, the appellant threatened her by saying that he had her

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objectionable photos and videos. It is also alleged that the appellant asked her to smuggle contraband. Allegation of passing casteist slurs has also been leveled against the appellant.

3. Learned counsel for the appellant *inter alia* submits that the appellant has been falsely implicated in this case. The appellant and the prosecutrix-respondent No.2 were in a consensual relationship. He further submits that no offence under the SC & ST Act has also been made out. Merely on account the fact that the prosecutrix-respondent No.2 belongs to Scheduled Caste is not enough to implicate a person under the provisions of the said Act, unless there is an intention to humiliate a person due to caste identity. To buttress this submission, learned counsel places reliance upon a judgment passed by the Hon'ble Supreme Court in **Criminal Appeal No.452 of 2021** titled as **Patan Jamal Vali Vs. State of Andhra Pradesh**. Further, as per the medical report, there is no injury on the person of the complainant. He also submits that there are discrepancies in the statements recorded by the prosecutrix. The allegations of blackmailing are also falsified as no objectionable image/video or any other incriminating material has been recovered from the phone of the appellant and further that nothing is to be recovered from the appellant. He submits that the material witnesses have also been examined before the trial Court. The appellant has undergone an actual custody of 01 year, 02 months and 18 days and there is another case registered against him but he is on bail in that case.

4. *Per contra*, learned State counsel and learned counsel for the complainant-respondent No.2 have vehemently opposed the submissions

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made by the learned counsel for the appellant. Learned State counsel submits that appellant was actively involved in the commission of the offence. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the appellant has undergone an actual custody of 01 year, 02 months and 18 days. He on instructions from SI-Sumer Singh that charges have been framed on 07.05.2024 and out of a total of 31 prosecution witnesses, 07 witnesses have been examined till date. However, it is not disputed that no objectionable content was found in the phone recovered from of the appellant. He however, submits that in view of the serious allegations against the appellant, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. At the outset, it would be apposite to refer to the landmark judgment of the Hon'ble Supreme Court in **Criminal Appeal No.2622 of 2024**, titled as **Shajan Skaria Vs. The State of Kerala and another**, construed Section 18 of the SC/ST Act 1989, while allowing the appeal and granting anticipatory bail to the appellant. Relevant paras of the judgment read thus :-

*'46. The aforesaid discussion indicates that the term 'arrest' appearing in the text of Section 18 of the Act, 1989 should be construed and understood in the larger context of the powers of police to effect an arrest and the restrictions imposed by the statute and the courts on the exercise of such power. Seen thus, it can be said that the bar under Section 18 of the Act, 1989 would apply only to those cases where prima facie materials exist pointing towards the commission of an offence under the Act,*

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*1989. We say so because it is only when a prima facie case is made out that the pre-arrest requirements as stipulated under Section 41 of CrPC could be said to be satisfied.*

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*48. As a sequitur, if the necessary ingredients to constitute the offence under the Act, 1989 are not disclosed on the prima facie reading of the allegations levelled in the complaint or FIR, then in such circumstances, as per the consistent exposition by various decisions of this Court, the bar of Section 18 would not apply and the courts would not be absolutely precluded from granting pre-arrest bail to the accused persons.*

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*69. What appears from the aforesaid discussion is that the expression “intent to humiliate” as it appears in Section 3(1)(r) of the Act, 1989 must necessarily be construed in the larger context in which the concept of humiliation of the marginalised groups has been understood by various scholars. It is not ordinary insult or intimidation which would amount to ‘humiliation’ that is sought to be made punishable under the Act, 1989. The Parliament, by way of different legislations, has over the years sought to target humiliation based on different grounds and identities which exist in the society. The Protection of Women from Domestic Violence Act, 2005 seeks to punish humiliation based on gender inequalities by specifically including the term ‘humiliation’ in the definition of “domestic violence”. Similarly, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 includes treatment causing humiliation to a female employee and which may likely affect her health and safety within the definition of sexual harassment.*

*70. In our considered view, it is in a similar vein that the term ‘humiliation’ as it appears in Section 3(1)(r) of the Act, 1989 must be construed, that is, in a way that it deprecates the infliction*

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*of humiliation against members of the Scheduled Castes and Scheduled Tribes wherein such humiliation is intricately associated with the caste identity of such members.*

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*80. At the cost of repetition, the words in Section 3(1)(r) of the Act, 1989 are altogether different. Mere knowledge of the fact that the victim is a member of the Scheduled Caste or Scheduled Tribe is not sufficient to attract Section 3(1)(r) of the Act, 1989. As discussed earlier, the offence must have been committed against the person on the ground or for the reason that such person is a member of Scheduled Caste or Scheduled Tribe. When we are considering whether prima facie materials exist, warranting arrest of the appellant, there is nothing to indicate that the allegations/statements alleged to have been made by the appellant were for the reason that the complainant is a member of a Scheduled Caste.'*

7. A perusal of the case in hand transpires that the appellant is behind the bar since 30.12.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 31 prosecution witnesses, only 07 witnesses have been examined so far. As per the FSL report dated 04.02.2025, no objectionable photos or other incriminating material has been recovered from the phone of the appellant. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/appellant. Keeping the appellant in further detention without the prospect of the trial being concluded in the near future, would be violate of his rights under Article 21 of the Constitution of India including the right to speedy trial, and

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is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in “*Dataram Singh vs. State of Uttar Pradesh and another*”, (2018) 3 SCC 22.

8. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present appeal is allowed and the appellant is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The appellant shall also abide by the following conditions:-

- (I) The appellant will not tamper with the evidence during the trial.
- (II) The appellant will not pressurize/intimidate the prosecution witness(s).
- (III) The appellant will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The appellant shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

9. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

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10. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

**(KIRTI SINGH)**  
**JUDGE**

**19.03.2025**

Ramandeep Singh

Whether speaking / reasoned

Yes/No

Whether Reportable

Yes/No