

Law Today Live Doc. Id. 15554

PUNJAB AND HARYANA HIGH COURT

Before: Jaswant Singh & Sant Parkash, JJ.

CRM-25568-2020 in CRA-406-DB-2018

Decided on: 28.10.2020

Rohit

Petitioner

Versus

State of Haryana

Respondent

Present:

Mr. S.K. Panwar, Advocate for the applicant/appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

Indian Penal Code, 1860 (45 of 1860), Sections 363, 366-A and 376 -- Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Section 4 -- Code of Criminal Procedure, 1973 (2 of 1974), Section 389 -- Conviction for 12 years in FIR u/s 363, 366-A and 376 of IPC and Section 4 of the POSCO Act – Suspension of sentence during the pendency of appeal -- 3 year 10 months sentence undergone – No date or time about the incident given by the victim -- Prosecutrix was got recovered by the police after a period of more than 5 months -- Specific stand of the applicant-appellant that there were friendly relations between them -- Victim has deposed that she was kept in a rented room for about five months -- Thus, she has every opportunity to escape from the custody of the applicant during the said period -- No specific proof of age of the victim -- Many debatable points in the appeal, which is not likely to be heard in near future keeping in view the prevailing pandemic situation -- Application allowed and further sentence of applicant-appellant suspended during pendency of the appeal.

(Para 6, 7)

1. By way of filing the present application (**first**), the applicant-appellant/Rohit has prayed for suspension of remaining sentence of 12 years, awarded to him in FIR No.284 dated 30.06.2016 under Sections 363, 366-A and 376 of the Indian Penal Code and Section 4 of the POSCO Act registered at Police Station. Bhupani, Faridabad.

2. The present case has been registered against the applicant-appellant on the complaint moved by mother of the victim that on 27.06.2016 at about 7.00 PM, her daughter/victim aged 15 years went to Subji Mandi for bringing vegetables but she did not return. The complainant alleged that one Rohit, who was residing in front of their house, had kidnapped her daughter by alluring her. On the basis of statement of the complainant, investigation was carried out and prosecutrix was recovered from Barhampur. During investigation of the case, applicant-appellant was arrested and challan was presented against him. The accused-appellant was held guilty for commission of offence as noted

above and he was convicted accordingly, vide judgment dated 03.04.2018 passed by the learned Additional Sessions Judge, Faridabad.

3. Learned counsel for the present applicant-appellant submits that the applicant-appellant is in custody since 30.11.2016. He further submits that there are material contradictions in the statements of the prosecution witnesses. He also submits that no date or time about the said incident had been given by the prosecutrix.

4. Learned counsel for the State submits that there are serious allegation against the applicant-appellant that first he kidnapped a minor girl by alluring her and thereafter he had committed rape upon her. He prays for dismissal of the application for suspension of sentence.

5. Heard learned counsel for the parties.

6. From the perusal of the case file, no date or time about the said incident had been given by the victim. It is also not in dispute that the prosecutrix was got recovered by the police on 30.11.2016 after a period of more than 5 months from the date of missing. It is the specific stand of the applicant-appellant that there were friendly relations between them. The victim has deposed that she was kept in a rented room in Barhampur for about five months. Thus, she has every opportunity to escape from the custody of the applicant during the said period. There is no specific proof of age of the victim. Applicant-appellant has already undergone more than 3 years and 10 months, which is not disputed by the learned counsel for the State. There are many debatable points in the present appeal, which is not likely to be heard in near future keeping in view the prevailing pandemic situation.

7. In totality of the facts and circumstances of the present case and more particularly the fact that appeal is already admitted, hearing whereof is likely to take time, the present application is allowed and further sentence of applicant-appellant (Rohit) is suspended during pendency of the appeal, subject to his furnishing personal/surety bonds to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate.

Application allowed.
