

(2017) 06 RAJ CK 0008
In the Rajasthan High Court
Case No : 810 of 2017

Kisnaram S/o Shri Ganesha Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 164](#) - Examination of witnesses by police - Recording of confessions and statements
[Indian Penal Code, 1860](#), [Section 176](#)

Citation : (2017) 06 RAJ CK 0008

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Ravindra Acharya, Pappu Sangwa, AS Rathore

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant and learned Public Prosecutor. Perused the material available on record.
2. This appeal has been preferred on behalf of the appellant under Section 14A(2) of the SC/ST (Prevention of Atrocities) Act being aggrieved of the order dated 29.5.2017 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Cases, Bikaner, in Cr.Misc. Case No.850/2017 rejecting the bail application preferred on behalf of the appellant who is in custody in connection with F.I.R. No.136/2017, registered at Police Station Nokha, Bikaner for the offences under Sections 342, 376(2)(1) & 450 IPC, Sections 3(1)(S)(W) & 3(2)(5)(5A) of the SC/ST (Prevention of Atrocities)

Act and Section 3/4 of the POCSO Act.

3. Learned counsel for the appellant urges that the FIR was lodged by the father of the victim after nearly 5 days of the incident. The highest allegations as set out in the FIR as well as in the first statement of the victim Mst.L recorded under Section 161 Cr.P.C., do not disclose any offence beyond Section 354 IPC. The victim refused to undergo medical examination for rape. The allegation of rape was developed by way of improvement in the statement of the girl recorded under Section 164 Cr.P.C. after nearly 14 days of the alleged incident. He urges that even in the said statement, the prosecutrix has not specifically alleged that she was subjected to penetrative sexual assault. He thus urges that the appellant deserves to be enlarged on bail.

4. Learned P.P. vehemently opposes the submissions advanced by the appellant's counsel.

5. Having regard to the facts narrated above and considering that in the belated FIR as well as in the statement of the victim recorded under Section 161 Cr.P.C., the highest allegation as against the appellant is that of indecent behaviour with the victim but without expressing any opinion on the merits of the case, this Court is of the opinion that the appellant is entitled to be released on bail.

6. Consequently, the appeal is allowed. The order dated 29.5.2017 is set aside. It is ordered that the accused-appellant Kisnaram arrested in connection with F.I.R. No.136/2017, registered at Police Station Nokha, Bikaner shall be released on bail during pendency of the trial; provided he furnishes a personal bond of Rs.50,000/- and two surety bonds of Rs.25,000/- each to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when

called upon to do so.