

CRM-M-55867-2022 (O&M)

-1-

205

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55867-2022 (O&M)
Date of Decision : 24.01.2024

Pawan Kumar Sharma & Anr.

....Petitioners

VERSUS

State of Haryana and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Abhimanyu Singh, Advocate for the petitioners.

Mr. Ranvir Singh Arya, Addl. A.G. Haryana.

Mr. Jasbir Mor, Advocate for the complainant.

-. -

SUDEEPTI SHARMA, J. (Oral)

CRM-34564-2023

1. Learned counsel for the applicant seeks permission to withdraw the instant application.

2. As prayed, the instant application is dismissed as withdrawn.

CRM-M-55867-2022

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioners in case FIR No.180, dated 07.11.2022, registered under Sections 376(2)(n), 376(3), 506 of the Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO) at Police Station Women Bhiwani.

2. On 02.12.2022, the following order was passed:-

“ *Petitioners are seeking anticipatory bail in case bearing FIR No. 180 dated 07.11.2022 under Sections 376(2)(n), 376(3), 506 IPC and Section 6 of Protection of Children from Sexual Offences Act, registered at Police Station Women Bhiwani.*

Precisely, the allegations against the petitioners are to the effect that they had been repeatedly committing rape upon the victim spreading over a period of 4 years. The petitioners are the uncles of the victim.

Learned counsel for the petitioners contend that there is a delay of 4 years in lodging the FIR. In fact, the victim was in relationship with someone. The mother of the victim wanted to solemnize her marriage elsewhere. The petitioners being relatives had extended help to the mother of the victim in solemnizing her marriage with Hardeep. Consequently, the victim had lodged a false case against the petitioners. It has been further submitted that mother of the victim had sworn an affidavit, Annexure P-1, which indicates false implication of the petitioners.

Notice of motion.

Mr. Karan Garg, AAG Haryana accepts notice on behalf of the State and seeks time to get instructions.

Mr. Jasbir Mor, Advocate has joined proceedings on behalf of the complainant and submits that there was lurking

fear on account of threat in the mind of the victim extended by the petitioners which prevented her from reporting the matter to the Police at the earlier instance. After her marriage, she gained strength with the support of her husband and came forward to report the matter to the Police. Even the affidavit, Annexure P-1 of the mother of the victim is dated 04.11.2022 whereas the FIR has been lodged subsequently on 07.11.2022.

Adjourned to 11.04.2023.

Meanwhile, the petitioners shall join the investigation and would come present as and when called for and in the event of arrest, the petitioners shall be admitted to interim bail on their furnishing personal and surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioners shall also abide by the conditions as specified under Section 438(2) Cr.P.C.”

3. After observing that there is a delay of 04 years in lodging of FIR and the victim was in relationship with someone, this Court had granted interim bail to the petitioners. After that the case was adjourned and interim order continued.

4. On 20.03.2023, the following order was passed:-

“ Reply by way of affidavit dated 18.03.2023 of Virender Singh, H.P.S., Deputy Suprintendent of Police, Bhiwani, filed on behalf of respondent-State is taken on record. Registry is directed to tag at appropriate place.

Learned senior counsel for the petitioners as well as counsel for the complainant would submit that parties are ready for polygraph or any other scientific test to ascertain the truth because there are oral allegations against each other. They further submit that prosecution may be directed to move an appropriate application before competent Court seeking permission for the aforesaid purpose.

Learned State counsel submits that Investigating Officer would submit application before competent Court for the aforesaid purpose.

Adjourned to 30.05.2023.

Interim order to continue.”

5. A perusal of the above-mentioned order shows that it was on the basis of submissions of both the counsels that polygraph test was allowed.

6. The relevant portion of the reply filed by way of affidavit dated 18.03.2023 of Virender Singh, H.P.S., Deputy Superintendent of Police, Bhiwani, is reproduced as under:-

“5. That in compliance of order dated 02.12.2022, the present petitioners had joined the investigation of the present case on 15.12.2022. Both the petitioners suffered their respective disclosure statements admitting their guilt of commission of offence and further, in pursuance of their disclosure statements, they got demarcated the place of

occurrence. Both the petitioners were medico-legally examined in Civil Hospital Bhiwani. Thereafter, they were released on interim anticipatory bail in compliance of order dated 02.12.2022 passed by this Hon'ble High Court.

6. *That in view of above facts and circumstances given above, it is clear that the present petitioners have committed a heinous crime against a child victim and serious allegations have been levelled by child victim against present petitioners regarding commission of repeated rape upon her. Both the petitioners were actively involved in the commission of offence. There are ample evidences against the present petitioners and there are sanguine chances of their conviction. The present petitioners are not law abiding citizens and there is every apprehension that they will hamper and tamper the evidence. As such, the present petitioners are not entitled to any relief as prayed for and their petition is liable to be dismissed, being devoid of any merit.*

7. Today, learned State counsel has placed on record a copy of report of polygraph examination dated 24.08.2023. The same is taken on record and a relevant portion thereof is extracted hereunder:-

“7. Polygraph Examination Procedure

7.1 Pre-Test Interview: *The Pre-test interview of the subjects was conducted on 21.08.2023. The object of Pre-test interview*

is to remove unfounded fears, if any, regarding the polygraph examination from the mind of the subjects and to build a proper psychological set in them and to facilitate proper recording of their physiological parameters on the polygraph equipment. The general nervousness, personality, general mental status and the language spoken and understood by the subjects were also assessed during the pre-test interview. During the pre-test interview the purpose of the examination, the working of the polygraph equipment, their legal and constitutional rights to refuse to undergo the polygraph examination were explained to them. Subjects have already given their consent to undergo polygraph test before the Mr. Anshuman, Hon'ble Judicial Magistrate I Class, Bhiwani, Haryana on 27.03.2023.

7.2 Personal profile of the subjects: *On the basis of Pre- test interview of the subjects their personal profile emerged as follows:*

7.2.1 In respect of Smt. Anamika: *Smt. Anamika is a young girl of 20 years of age. She has studied up to 12th standard and is a house wife. On inquiring, she did not report any physiological discomfort on the date of the examination. About the crime under investigation, she claimed that she was exploited sexually by Pawan and Ajit between 2018-2021 and*

was threatened. Throughout the examination she was found to be co-operative and calm.

7.2.2 In respect of Pawan Kumar Sharma: *Pawan Kumar Sharma is a man of 47 years of age. He has studied up to 11th standard and is doing textile business at Surat. On inquiring, he did not report any physiological discomfort on the date of the examination. About the crime under investigation, he denied any sexual contact with Anamika and threatening her. Throughout the examination he was found to be co-operative and calm.*

7.2.3 In respect of Ajit Kumar Sharma: *Ajit Kumar Sharma is a young man of 46 years of age. He has studied up to 11th standard and is doing textile business at Surat. On inquiring, he did not report any physiological discomfort on the date of the examination. About the crime under investigation, he denied any sexual contact with Anamika and threatening her. Throughout the examination he was found to be co-operative and calm.*

7.3 Questionnaire formulation: *The Questionnaire was formulated on the basis of the facts of the crime and the pretest interview had with the subjects. For formulating the questionnaire, the Control Question Technique was used. The questions were formulated on the issues w.r.t paragraph 5.2 of this report. The questionnaire consisted of a mix of irrelevant,*

control and relevant questions (related to crime under investigation). The questionnaire was formulated in MGQT format for the polygraph test of all three subjects.

7.4 Polygraph examination: *The subjects were familiarized with the equipment and necessary instructions were given to them. Two Pneumo tubes (one on the chest and another on abdomen) to record respiration; one blood pressure cuff on the arm to record the blood pressure, pulse rate; and two electrodes (one on ring finger and one on forefinger) to record the galvanic skin reflex was attached to the subjects for polygraph examination. Initially, the normal physiological parameters of the subjects were recorded prior to the administration of the questionnaire. After recording the normal physiological parameters, the questionnaire was reviewed with the subjects and the subjects were instructed to answer the questions either in 'Yes' or 'No'. The review of the questionnaire revealed that the subjects were able to understand the questions properly and able to answer appropriately. Another normal physiological response (in order to assess whether the introduction of questions has affected the physiological recordings) was recorded. The questionnaire was administered three times. Each question was asked after a gap of 25 seconds. After the three administrations of the questionnaire, the subjects were*

informed that examinations were over and only recording will be done without asking questions for few minutes. Finally, normal recording of the physiological functions of the subjects were recorded. The accessories of the polygraph equipment were removed from the subjects.

7.5 Post Test Interview: During post-test interview, the subject's signatures were obtained on all the charts and questionnaires administered on them.

8 Polygraph Assessment

8.1 In respect of Smt. Anamika

The polygraph examination of Smt. Anamika was conducted on 21.08.2023. During the polygraph examination, she was asked the questions which included the relevant (crime related) issues. The relevant issues and her answers were as follows:

<i>Issues</i>	<i>Answers</i>
<i>(i) Whether she was raped by Pawan?.</i>	<i>Yes</i>
<i>(ii) Whether she was raped by Ajit?</i>	<i>Yes</i>
<i>(iii) Whether it is true that she was threatened after the incident of rape?</i>	<i>Yes</i>
<i>(iv) Whether she was raped by Pawan and Ajit during 2018-2022?</i>	<i>Yes</i>
<i>(v) Whether she is alleging rape case falsely on Pawan and Ajit?</i>	<i>No</i>

Opinion

On the basis of Polygraph examination and analysis of polygrams, the following opinions have been formulated in respect of Smt. Anamika.

*A. The analysis and evaluation of polygrams reveal truthful response on the issues No.(i) & (ii). According to polygraph examination and analysis of polygrams, **Smt. Anamika is truthful** in her answers on the issues No. (i) & (ii).*

*B. No meaningful inference could be drawn on the analysis and evaluation of polygrams of **Smt. Anamika** on the issues No.(iii) to (v). No opinion, therefore, could be furnished in respect of the issues no. (iii) to (v).*

8.2 In respect of Pawan Kumar Sharma

The polygraph examination of Pawan Kumar Sharma was conducted on 21.08.2023. During the polygraph examination, he was asked the questions which included the relevant (crime related) issues. The relevant issues and his answers were as follows:-

Issues	Answers
<i>(i) Whether his brother was having any physical contacts with Anamika</i>	No.
<i>(ii) Whether he was having any physical contacts with Anamika?</i>	No.
<i>(iii) Whether he was having any sort of physical contacts with Anamika during the period 2018-22?</i>	No.

(iv) *Whether he threatened Anamika during the period 2018-22?* No.

Opinion
On the basis of Polygraph examination and analysis of ploygrams, the following opinions have been formulated in respect of Pawan Kumar Sharma.

*A) The analysis and evaluation of polygrams reveal deceptive responses on the issues No.(i) to (iii). According to polygraph examination and analysis of polygrams **Pawan Kumar Sharma is deceptive** in his answers on the issues No. (i) to (iii)*

*B) No meaningful inference could be drawn on the analysis and evaluation of polygrams of **Pawan Kumar Sharma** on the issue No.(iv). No opinion, therefore, could be furnished in respect of the issue No.(iv).*

8.3 In respect of Ajit Kumar Sharma

The polygraph examination of Ajit Kumar Sharma was conducted on 21.08.2023. During the polygraph examination, he was asked the questions which included the relevant (crime related) issues. The relevant issues and his answers were as follows:-

Issues	Answers
(i) <i>Whether he was having any physical contacts with Anamika?</i>	No.
(ii) <i>Whether he threatened Anamika during the period 2018-22?</i>	No

- (iii) *Whether he was having any sort of physical contacts with Anamika during the period 2018-22?* No.
- (iv) *Whether his brother was having any physical contacts with Anamika* No

Opinion

On the basis of Polygraph examination and analysis of ploygrams, the following opinions have been formulated in respect of Ajit Kumar Sharma.

*A) The analysis and evaluation of polygrams reveal deceptive responses on the issues No.(i) to (iii). According to polygraph examination and analysis of polygrams **Ajit Kumar Sharma is deceptive** in his answers on the issues No. (i) to (iii).*

*B) No meaningful inference could be drawn on the analysis and evaluation of polygrams of **Ajit Kumar Sharma** on the issue No.(iv). No opinion, therefore, could be furnished in respect of the issue No.(iv).*

Note:- *This report shall not be reproduced except in full, without the written approval of Director, CFSL, New Delhi except by the Judicial Courts and investigating authorities related to this case.*

8. Learned counsel for the complainant submits that since the date the petitioners were granted interim bail i.e. 02.12.2022, the victim and

her family members are being pressurized to withdraw the complaint. He further submits that the victim is receiving fake calls by stating that they are calling from the Jail Superintendent Office and when this was verified from the Jail Superintendent Office, whether any call was made by them, it was found that the said numbers were not of Superintendent's Office. Learned counsel for the complainant has shown to this Court two complaints made by the victim in this regard, which are also taken on record.

9. Learned counsel for the petitioners has placed reliance on the judgment of **Suman Vs. Ram Mehar and Others 2015 (27) R.C.R (Criminal) 867** wherein it has been held that polygraph test is not a substantive evidence and it cannot be used to prove the guilt of the accused. This judgment would be of no help to the petitioner since the polygraph test is conducted in view of order dated 20.03.2023 and the petitioners agreed to the same.

10. I have heard learned counsel for the parties and perused all the documents placed before this Court i.e. FIR, status report mentioned above, report of polygraph examination, etc.

11. In view of the discussion made above, this Court does not find any merit in the present petition, which is accordingly dismissed.

12. Pending applications, if any, also stand disposed off.

January 24, 2024
tripti

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No