

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-13019-2015

Date of decision: 14.05.2015

Rajbir Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Vikas Singh, Advocate for the petitioner.

R.P. NAGRATH, J. (ORAL)

Challenge in the instant petition filed under Section 482 Cr.P.C. is to the order dated 31.03.2015 (Annexure P-3), passed by the learned Additional Sessions Judge (Fast Track Court), Ropar whereby the statements of PWs, namely; ASI Jarnail Singh and ASI Sukhminder Singh are deemed to have been recorded and their cross-examination has been treated as NIL, opportunity given.

Learned counsel for the petitioner at the outset submits that the petitioner forgoes his claim to seek bail on the ground that evidence of the prosecution was not closed within time i.e. by 31.03.2015 which was the conditional concession granted to him by this Court vide order dated 23.01.2015 (Annexure P-2), passed by this Court in **CRM-M-1854-2015**, though the petitioner may apply for bail on merits, if permissible.

The order dated 31.03.2015 (Annexure P-3) reads as under:-

“Two Pws namely ASI Jarnail singh and ASI Sukhmander singh present for recording their cross-examination and the case was called several times for recording their cross-examination as initially, it was called at 10.45AM, then accused stated that his counsel is coming within 15 minutes to cross-examine these witnesses, but the Ld. Defence counsel not came present up to 11.30Am despite calling the case several times. Then, the present case was called again at 12.15Pm. Then, the Ld. Proxy Counsel Sh. Paramjit singh Junior Advocate to defence counsel Sh. Mandeep Moudgil Adv appeared in the court and stated that his Senior Counsel is coming within 15 minutes, but the Ld. Defence counsel not came present. Thereafter, the case was again called at 12.40Pm, then accused stated that his counsel will come after lunch break to cross-examine these witnesses. After Lunch break, the case was again called at 2Pm, but again accused stated that his counsel is coming within 15 minutes, but Ld. defence counsel not came present. Lastly, the case was again called at 3.15Pm. Then, the accused stated that his counsel is unable to come present on today to cross-examine these witnesses and requested for

adjournment, but no ground is made out to adjourn this case for cross examine these witnesses as perusal of file shows that the accused had approached the Hon'ble High court for grant of regular bail and then, the Hon'ble High court had dismissed his bail application vide its order dated 23.1.2015, wherein, *the Hon'ble High Court had observed that, " In these circumstances, this petition is dismissed at this stage but it is directed that in case the prosecution evidence is not concluded by 31.3.2015 (subject to the petitioner not obstructing the same), the trial court shall release the petitioner on bail to its satisfaction"*. Apart from this, perusal of file shows that except present PWs namely ASI Jarnail singh and ASI Sukhmander singh, all other witnesses of prosecution have already been examined in this case and present PWs namely ASI Jarnail singh and ASI Sukhmander singh are present in the court on today upto 3.15Pm since morning for recording their cross-examination, but the Ld. Counsel for accused not came present for cross-examine these witnesses. These circumstances clearly show that accused is not complying with the order of the Hon'ble High court dated 23.1.2015, rather the Ld. defence counsel does not want to cross-examine these witnesses and he wants to cross this deadline of time,

given by the Hon'ble High court as per its order dated 31.3.2015 and after that accused will be released on bail automatically. In these circumstances, the court is left with no option to give opportunity to accused to cross-examine these witnesses but he did not cross-examine them inspite giving opportunity. Hence, after giving opportunity to cross examine these witnesses, the present witnesses are discharged and their statements are considered to be recorded. Separate presence with time of these witnesses were marked on the order sheet of today. Then, the Ld. Addl. PP for state closed evidence of prosecution. Now, to come up on 8.4.2015 for recording statement of accused u/s 313 Cr PC.”

The perusal of impugned order Annexure P-3 passed by the trial Court would reveal that all out effort was made to see the witnesses return un-examined for getting benefit of the order Annexure P-2. Such a practice cannot be approved. It is, however, contended that the learned defence counsel was not quite well, but that stand was not projected before the trial Court.

The learned petitioner's counsel, however, urged that given only one opportunity the petitioner would cross-examine the above-stated witnesses without making prayer before the trial Court to wait for his counsel even for 5 minutes.

Notice of motion.

On the asking of Court, Mr. Gurveer Sidhu AAG, Punjab accepts notice on behalf of respondent-State.

Let a copy of paper-book be supplied to learned State counsel during the course of day.

In view of the nature of order that is proposed to be passed, no reply is required to be filed by the respondent-State. Only two PWs, namely; ASI Jarnail Singh and ASI Sukhminder Singh remain to be cross-examined in rest of the evidence.

After hearing learned counsel for the petitioner and learned State counsel, the instant petition is allowed with the condition that only one opportunity would be granted to the petitioner to cross-examine the witnesses, namely; ASI Jarnail Singh and ASI Sukhminder Singh on securing their presence, subject to the aforesaid undertaking by learned counsel for the petitioner made at the outset. The trial Court would not be obliged to wait even for 5 minutes for counsel for petitioner when the case is called for enabling the petitioner or his counsel to cross-examine the PWs. In case, the defence counsel does not immediately attend or if there is any change of counsel and an adjournment is requested, the trial Court would be at liberty to close the cross-examination of these witnesses.

May 14, 2015
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(R.P. NAGRATH)
JUDGE