

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15277-2016 (O&M)
Date of decision: October 18, 2016.

Sushma @ Simmi

... **Petitioner**

v.

Central Bureau of Investigation

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri S.K. Garg Narwana, Sr. Advocate with
Ms.Shweta Nahata, Advocate for the petitioner.

Shri Sukhdeep Singh Sandhu, Advocate for CBI.

A.B. Chaudhari, J. (Oral):

This is a petition for bail by the petitioner Sushma @ Simmi in
FIR No.RC-5(S)/2012/SCB/CHG dated 12.7.2012, registered under
Sections 354, 376, 342, 323, 506, 109, 374, 366A, 372, 418, 420, 468, 471,
217, 218 r/w 120-B IPC, Sections 3, 4, 5 Immoral Traffic (Prevention) Act,
1956, Section 16 of the Bonded Labour System (Abolition) Act, 1976 and
Sections 23 & 26 of the Juvenile Justice Act.

In support of the petition, Learned Counsel for the petitioner
vehemently argued that the petitioner does not have any criminal
antecedents and is a young woman of 26 years of age. Inviting my attention
to proviso to Section 437 Cr.P.C., he contended that being a woman, she is
entitled to bail particularly because she is in jail since the date of her arrest,
namely, 10.5.2012 and now period of over four and a half years has already
elapsed. According to him, the evidence of some minor girls has been

recorded before the trial court and the said evidence does not show any major role on the part of the petitioner to presume that she would be convicted for imprisonment for life. On the contrary, according to him, the petitioner having already undergone about 4-1/2 years of incarceration, she would be entitled to grant of bail since she has completed almost half of the sentence which could, if at all ultimately, is awarded to her even if the case of the prosecution is presumed to have been proved.

Learned Counsel for the petitioner as well as learned counsel for the CBI took me through the evidence that has been recorded by the Special Judge and I have gone through the same carefully with their assistance. Learned Counsel for the petitioner then contended that the prosecution allegations against the petitioner that the petitioner used to take photographs of the minor girls in nude condition, is also prima facie negatived in view of the CFL report in respect of the Laptop, computer, etc. recovered from her. According to him, thus the only allegation that remains on record is that she had abetted the commission of offences by the male accused persons and looking to the punishment that is provided for the abetment, the petitioner would be entitled to grant of bail. He then contended that the prosecution has cited as many as 185 witnesses, out of whom only 55 have been examined during the last few years. The petitioner cannot therefore be denied the valuable right to be at liberty and therefore, he prayed for grant of bail. According to him, the main accused Jaswant, Jai Bhagwan and Satish are already in jail who are stated to have committed rape from time to time on the minor children.

Jaswanti, the main accused running 'Apna Ghar' is also in jail.

Per contra, learned counsel for CBI opposed the petition for grant of bail tooth and nail and submitted that the petitioner is not at all entitled to grant of bail for the reasons more than one. According to him, earlier Jaswant had applied for grant of bail which was dismissed on 11.3.2014 by a Coordinate Bench of this Court and the Bench had directed the CBI to ensure correct addresses of the witnesses and see that the trial is completed expeditiously. The petitioner had withdrawn her bail petitions. He then submitted that mere delay in the trial is no ground to grant bail as held by the Apex Court in the case of Rajesh Ranjan Yadav @ Pappu Yadav v/s CBI through its Director, 2007(1) RCR (Crl.) 166 and Rajesh Ranjan Yadav @ Pappu Yadav v/s CBI through its Director, 2008(1) RCR (Crl.) 233 and, therefore, the submission that bail be granted because of incarceration for four and a half years, should not be accepted. Learned counsel for CBI then contended that the mother of the petitioner, namely, Jaswanti, who is the main person who had been running Apna Ghar, in which minor girl children were housed and were raped by male members of the family of Jaswanti and the petitioner is equally guilty of the serious offences. He then submitted that she thus willfully aided the commission of serious offences by the male co-accused persons, Jai Bhagwan, Jaswant and Satish, and who are closely related to her. The petitioner had not prevented them from committing rape on the minor children and since the trial is already on, the witnesses can be intimidated by the petitioner and therefore, bail should not be granted to her. He then submitted that further

25 minor girls are yet to be examined but the trial is being delay because they are not found on the addresses when the CBI attempts to serve them for summoning as witnesses in the court. He then submitted that CBI is making all efforts, as ordered by the Coordinate Bench, to complete the trial as expeditiously as possible. Finally, he prayed for dismissal of the petition for bail.

I have heard Learned Counsel for the rival parties at length.

It is not in dispute that the petitioner is in jail after her arrest on 10.5.2012, i.e., for a period of almost four and a half years. The judgments cited by counsel for the CBI are in respect of Pappu Yadav of Bihar who was involved in large number of criminal cases of heinous nature. Apart from the fact that the petitioner before this Court is a woman of 26 years of age having no criminal antecedents, the said two decisions in the case of Pappu Yadav cannot therefore be applied in the present case. That apart, it is true that the offences of gang rape of minor girl children in an NGO set up by Jaswanti, mother of the petitioner, are serious. But then, the Court is under a duty to find out the exact nature of offences committed by the petitioner and the sentence which could be ultimately awarded to her in the event of her conviction. Obviously, the petitioner-woman cannot be held guilty of rape. This Court has therefore scanned the entire material for finding out prima facie the offences made out against the petitioner for balancing her detention and liberty.

It is seen from the evidence tendered before the trial court that the role attributed to the petitioner is that she was taking nude photographs

of the minor girls and had abetted the offences of rape/gang-rape etc. The contention raised by learned counsel for CBI about conspiracy under Section 120-B IPC, prima facie is not acceptable as there is evidence to that effect. In so far as the prosecution case and the evidence tendered before the court, as against the petitioner is concerned, what I prima facie find is that the petitioner cannot be convicted for any offences except abetment of rape/gang-rape which is not the case with the other accused. But then, looking to the sentence provided therefor, I think the petitioner who has undergone half of the sentence. That apart, the most significant aspect of the case is that for the last two years, the trial is being held with snail's speed. The prosecution has so far examined only 55 witnesses out of 185 witnesses and one does not know when all the witnesses would be examined and the prosecution case would be closed.

The counsel for the CBI fairly stated that minor girl witnesses are not being brought before the court as their addresses are wrong and they are not traceable and therefore, it has become difficult for the prosecution to bring the witnesses before the court with expedition. In my opinion, the difficulty on the part of the prosecution in bringing the prosecution witnesses before the court cannot and should not be the legal filibuster in considering her plea for bail. The prosecution may continue to examine the witnesses for number of years but then it cannot lie in the mouth of the prosecution that even in that event the liberty of the petitioner should be curtailed, she having already undergone the detention of almost four and a half years. The petitioner does have a right to speedy trial, but then, it is

not happening in her case.

In that view of the matter, I am satisfied that being a woman, the petitioner is entitled to benefit of proviso to Section 437 Cr.P.C. for the purpose of grant of bail particularly in the light of the entire discussion made by me above. The Learned Special Court may put the prosecution to terms in order to ensure speedy disposal of the trial also in case of the other accused persons. Let the trial be completed within six months. Hence, I make the following order:-

ORDER

- (i) CRM-M-15277-2016 is allowed;
- (ii) the petitioner shall be released on bail on such terms and conditions as would be imposed by the learned trial Judge;
- (iii) the petitioner shall not tamper with the prosecution witnesses.
- (iv) The Learned Special Judge may put the prosecution to terms and complete the trial within six months.

October 18, 2016.
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[**A.B. Chaudhari**]
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No