

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-37450-2018
Decided on : 17.01.2020**

Saroj

. . . Petitioner(s)

Versus

State of Haryana and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Aditya Sanghi, Advocate
for the petitioner(s).

Mr. D.R. Singla, DAG, Haryana.

Ms. Kavya Jaryal, Advocate for
Mr. Sumeet Goel, Advocate for CBI.

Mr. Anshuman Dalal, Advocate
for respondents No.2, 4 & 5.

MANJARI NEHRU KAUL, J. (Oral)

The instant petition has been filed under Section 482 Cr.P.C. with a prayer to stay further proceedings before the trial Court or for a direction to the trial Court to adjourn the proceedings of the case '*sine die*' or in the alternative for staying the passing of final judgment, in the case arising out of FIR No. 396, dated 29.10.2013, under Sections 363, 366-A, 376-D, 342, 506 IPC read with Section 4 of the POCSO Act, registered at Police Station Rohtak Sadar, District Rohtak, since the prosecutrix/victim has gone missing and is untraceable. The petitioner is the mother of the prosecutrix/victim, who lodged FIR No. 6, dated 13.01.2014, under Section 365 IPC, registered at Police Station Rohtak Sadar, District Rohtak, after her daughter went missing on 01.01.2014 from her home.

It would be relevant to give a brief sequence of events leading to the present petition filed by the mother of the missing girl. The daughter

of the petitioner was allegedly kidnapped by accused namely Narender, Pardeep and Ashok, respondents No.2, 4 & 5, respectively, in which regard an FIR No.396, dated 29th October, 2013, under Sections 363, 366-A IPC was registered against them in Police Station Sadar, Rohtak.

After the registration of case FIR No. 396, under Sections 363, 366A IPC, the daughter of the petitioner i.e. the victim was recovered on 19.12.2013 from Old Delhi Railway Station. Thereafter, her statement under Section 164 Cr.P.C. was recorded before the Court below and after her medico legal examination, she was handed over to the petitioner on 25th December, 2013. In her statement under Section 164 Cr.P.C. recorded before the Court below on 19.12.2013, the prosecutrix stated that on 27.10.2013, she had gone to Hyderabad of her own accord and free will to visit Film City and nobody had induced her to do so. On being asked by the Court, she expressed her desire to accompany her father. However, in her subsequent statement again recorded under Section 164 Cr.P.C. on 25.12.2013, the prosecutrix stated that on 27th October, 2013, two boys respondents-accused Pardeep and Ashok @ Dilla left her at the bus stand from where accused-Vicky picked her up and took her to Gohana by bus. On the same evening brother of accused-Vicky namely Vijay came on a vehicle and thereafter both the brothers took her to village Kathura, where, they confined her in a room from 27th October, 2013 to 16th December, 2013. It was stated by her that during this period both the brothers would visit the said room at night and commit rape upon her at gun point. On 16.12.2013, she was left at Panipat Railway Station after being threatened that in case she dared to disclose the said fact to her family members, she would be done to death. It was on the basis of this second statement

recorded under Section 164 Cr.P.C. on 19.12.2013, offences under Sections 342, 376D, 506, 34 IPC and under Sections 25, 54, 59 of the Arms Act and Section 4 POCSO Act, were added. Subsequently, accused-Narender @ Vicky was arrested on 31.12.2013. He was subjected to interrogation. One of the accused being a juvenile, was sent to a juvenile home at Hissar. Accused Ashok @ Dilla and Pardeep surrendered on 22.01.2014 and were also associated with the investigation. Challan was presented for offences under Sections 363, 366-A, 376-D, 342, 506 IPC and Section 4 of the POCSO Act. The charges thereafter were framed against the accused under Sections 363, 366-A, 342, 376-D IPC read with Section 9 (g) of the POCSO Act, 2012 and Section 506 IPC.

It has been alleged that after the recovery of the prosecutrix, the accused in connivance with the police and others extended threats to the petitioner for withdrawal of the case registered against them and threatened to kidnap her daughter. On 01.01.2014, the daughter of the petitioner again went missing, in which connection, an FIR No. 06, dated 13.01.2014, for offence under Section 365 IPC at P.S. Rohtak Sadar, District Rohtak, was registered at the instance of the petitioner, wherein, it was alleged that due to the repeated threat calls and fear of the accused, her daughter was disturbed and had not been eating her food. On the morning of 01st January, 2014, her daughter (prosecutrix) was found missing from the house. She suspected the involvement of the aforementioned accused in her daughter's disappearance. The petitioner also approached this Court by way of CRM-M No. 17447 of 2014, wherein, it was submitted by the State that an untraced report had been prepared by the SHO concerned and the same would be presented in the Court.

It is in the above circumstances, learned counsel for the petitioner urged that since the daughter of the petitioner i.e. the prosecutrix had still not been traced, further proceedings before the trial Court be stayed and the case be adjourned *sine die*, as her testimony before the trial Court in case FIR No. 396, dated 29.10.2013, would be essential for the just decision of the case. Learned counsel for the petitioner also argued that the State had failed to follow the procedure as prescribed under Section 154 Cr.P.C. to trace out missing persons and in support of his submissions placed reliance on ***World Human Rights Protection Counsel and another Vs. State of Punjab and others, 2012(3) R.C.R. (Criminal) 939***, wherein, specific directions were issued with respect to the procedure to be followed to trace out missing persons.

During the pendency of the instant petition, vide order dated 11th March, 2019, the Central Bureau of Investigation (CBI) was put on notice. In response thereto, CBI in its reply dated 06.07.2019 submitted that the CBI had limited manpower and resources at its disposal. Besides, the case in hand did not fall within the purview of the guidelines laid down by the Hon'ble Supreme Court of India in ***State of West Bengal Vs. Committee for Protection of Democratic Rights*** 2010(3) SCC Page 571.

The State of Haryana in its reply dated 13.05.2019 submitted that a thorough investigation was carried out against the accused Narender and Vijay. However, nothing incriminating could be found against them. It was also submitted that strenuous efforts were made by the State as per the procedure prescribed under Section 154 Cr.P.C. and the directions given by the Supreme Court in ***World Human Rights Protection Counsel's case*** (supra). Handbills bearing photographs and the description of the missing

girl were distributed and displayed at all prominent and public places, but the same failed to yield the desired result. Lie-detector tests were also conducted on the petitioner, Naresh (father of the prosecutrix) and suspected persons namely (1) Narender, (2) Pardeep and (3) Ashok. Not only this, a Special Investigation Team (SIT) was also constituted and investigation of the case was then transferred to the State Crime Branch, Haryana, Panchkula. The investigation failed to get any clue, whatsoever, about the missing girl and it was in this background that the police filed an un-traced report on 10.09.2016.

Learned State counsel vehemently opposed adjourning the case pending before the trial Court *sine die*, urging that no such provision for adjourning the trial *sine die* existed in the Code of Criminal Procedure.

I have given my anxious consideration to the matter. It is one of those cases, wherein, the matter *qua* the disappearance of the daughter of the petitioner was investigated by the State machinery and also by a Special Investigating Team and Crime Branch. The investigation was carried out from different angles including putting the accused as well as the parents of the missing girl to a lie-detector test. However, as already observed, it failed to provide any clue about the missing girl.

The trial in FIR No. 396, dated 29th October, 2013, was underway, when vide order dated 29.08.2018 by this Court, the proceedings were stayed. In view of the above, when despite strenuous efforts, there has been no trace of the missing girl, the proceedings before the trial Court cannot be stalled indefinitely, much less, adjourned *sine die*, as rightly pointed out by the learned State counsel as well as the learned counsel for the private respondents, to await the appearance of the missing girl

(prosecutrix). Learned counsel for the petitioner has not been able to controvert the said submissions of the learned counsel for the respondents that the trial cannot be adjourned *sine die* in the absence of any such provision in Code of Criminal Procedure.

Keeping in view the aforesaid discussion and in the facts and circumstances of the case, the instant petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

January 17, 2020

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*