

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-4702-2018 (O&M)

Date of decision: 04.03.2020

Sandip and others

....Petitioners

Versus

Central Bureau of Investigation

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Pardeep Kumar Rapria, Advocate
for the petitioners.

Mr. Sumeet Goel, Standing counsel for CBI
with Ms. Ramandeep Kaur, Advocate.

Mr. Safraj Hussain, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J.

This is 2nd petition for grant of regular bail in FIR No.RC SI 2016 S 0009/CBI/SC-1/New Delhi dated 05.12.2016 under Section 120-B read with Sections 302, 307, 376-D, 376(2)(i), 323, 325, 459, 460, 396, 397 of the Indian Penal Code (for short 'IPC'), Section 6 of Protection of Children from Sexual Offence Act, 2012 (for short 'POCSO Act') and Section 25/54/59 of Arms Act.

On 07.03.2018, the petitioners were granted interim bail for six weeks, by passing the following order: -

“...Learned counsel representing CBI submits that as per additional challan filed by CBI against Hemant Chauhan and Jai Bhagwan, it has been mentioned in para 16.7 of the challan that so far nothing incriminating has emerged against accused Sandip, Karamjeet, Amarjeet and Rahul during further investigation by CBI except the oral statement of victim and their family members and their test identification. Further investigation is continuing. He further submits that CBI in view of scientific evidence collected by it, has not accepted the evidence gathered by District police during investigation and the matter has been kept open for further investigation. As and when further evidence comes to the notice of CBI, further report/supplementary challan will be filed in the Court against accused Sandip, Karamjeet, Amarjeet and Rahul.

In view of submission of learned counsel representing CBI and keeping in view the fact that the matter is still under investigation, the petitioners are allowed interim bail for six weeks, on furnishing bail bonds and surety bonds to the satisfaction of Special Judge (CBI), Haryana at Panchkula/Chief Judicial Magistrate, Panchkula.

List on 17.04.2018.

Mr. Sarfraj Hussain, Advocate, who has also put in appearance on behalf of complainant, submits that the petitioners were also identified by the victims and they have not

been allowed any clean chit by the CBI.

The above submission will be considered on the next date on which CBI will apprise about further investigation and material, if any, collected against petitioners.”

Thereafter, the case was adjourned on request of learned counsel for CBI to apprise the Court about the status of investigation. On 06.02.2019, it was noticed that investigation is at the final stage and is likely to be concluded. Again on the request of learned counsel for CBI, for completing the investigation, the case was adjourned from time to time.

Learned Standing counsel for CBI has submitted that the investigation is complete and supplementary challan has been submitted against three other accused persons.

Learned counsel for the petitioner, before referring to the arguments on merits, has submitted that since the petitioners are on interim bail, the order dated 07.03.2018 may be confirmed.

It is worth noticing here that this is second petition for grant of regular bail and new ground was that the CBI is still investigating the matter, as noticed in the order dated 07.03.2018.

Brief facts of the case are that the first bail application of the petitioners was dismissed, by passing a detailed order dated 25.07.2017 and the same is reproduced as under: -

“The present petition has been filed under Section 439 read with Section 482 of Code of Criminal Procedure for grant of regular bail to petitioners in case FIR No. RC-SI-2016-S-0009/CBI/SC-

1/New Delhi dated 05.12.2016 registered for offences punishable under Sections 302, 325, 326, 459, 460, 376-D, 396 and 397 of Indian Penal Code (for short, "IPC"); 6 of Protection of Children from Sexual Offences Act; and 25 of the Arms Act.

2. Petitioners were arrested in this case for which FIR was registered at Police Station Tauru District Mewat for offences punishable under Sections 376D, 459 and 460 of Indian Penal Code; 25 of the Arms Act; and 6 of Protection of Children from Sexual Offences Act, 2012.

3. As per version in the FIR, occurrence took place on 25.08.2016, when complainant, who had come to her parents' house because of Eid festival, was sleeping in a room with her three cousins. Her uncle Jafaruddin and others were sleeping in the compound. She heard noise from the compound side and found that 4/5 persons out of whom two were wearing underwear and vest and remaining persons, who were wearing pant-shirt, came inside their room. They took their dupattas and tied complainant's uncle Jafaruddin and others sleeping in the compound with cots and gave them beatings with dandas and iron rods. Thereafter, they came to their room and committed rape with complainant and her cousin. They enquired about jewellery and cash. One of the assailants was having a country made pistol. They searched boxes lying in the room; emptied the

tank in which grain was stored and then bolted all the girls inside the room. While going, they took away their motorcycle. They stayed in the house from 12.00 a.m. to 03.00 a.m. One of her relative succeeded in slipping away and informed maternal grandfather of complainant, who alongwith Imran came to spot, untied complainant's uncle and other persons and reported the matter to police. Injured were taken to hospital, where Rashidan w/o Ibrahim and Ibrahim died.

4. The police investigated the case but later on vide letter dated 20.09.2016 written by Additional Chief Secretary to Government of Haryana, Home Department to Government of India, request was made to hand over investigation of the case to CBI. CBI registered case bearing FIR No. RC-SI-2016-S-0009/CBI/SE-I on 05.12.2016. Petitioners were arrested in this case on 28.08.2016 and were subjected to test identification parade.

5. Learned counsel for petitioners while seeking bail for all the petitioners has argued that incident, in which two persons were murdered, two girls were raped and injuries were caused to family members of complainant, was presented by media as sensational case by giving it a communal colour. The police has conducted DNA test of petitioners which did not match with semen found on clothes of prosecutrix. Nothing could be found against petitioners in their lie detection test. There is no report that finger prints lifted from the spot tallied with finger prints of

petitioners. No weapon or any stolen article was recovered from petitioners and there is no evidence to connect them with the occurrence. Petitioners were called to Police Station to join investigation and were arrested when they had themselves gone there. Keeping in view above facts he seeks regular bail for petitioners.

6. Learned counsel for respondent-CBI has argued that the question is not of media trial of the case. During test identification parade, prosecutrix have identified petitioners. Statement of one Parvez was also recorded wherein he has stated that petitioners used to come to shop of his maternal uncle (name withheld) and their behaviour with him was very bad. They used to take goods from the shop and never made payment to him. He had also identified petitioners at the time of occurrence. Petitioners were named by Jafru, Naved who identified them at the time of occurrence. Further investigation in the case is still under progress. CBI is collecting other evidence like comparison of finger prints, DNA etc. Keeping in view the gravity of offence, petitioners are not entitled to bail.

7. It is a case where assailants entered house of complainant, gave beatings to male members, which resulted in death of two persons, and committed rape with two girls. In the test identification parade, petitioners were identified by both the prosecutrix. Besides their statement, one of the family member

and two other witnesses have named them. Trial of the case is in progress. Grant of bail to petitioners at this stage will certainly effect the case of prosecution. Even if media has created a hype about the incident, the same cannot be taken as a reason for false implication of petitioners in this case. The media if had highlighted the incident, the same was only for information of general public. Test identification parade of petitioners was conducted and direct oral evidence has also been collected about their involvement in this case.

8. Learned counsel for petitioners has argued that test identification parade conducted in this case has no meaning as photographs of petitioners were already in media before conducting their test identification parade.

9. At this stage, it will not be appropriate to comment on above submission of learned counsel for petitioners as the same is subject to evidence that may be produced by the prosecution and in defence. Plea of learned counsel for petitioners require corroboration by material evidence, which will be tested by trial Court while scrutinizing its evidentiary value. Keeping in view the fact that petitioners have been identified by prosecutrix in test identification parade and have also been named by prosecution witnesses, I find no reason to extend the benefit of regular bail to them at this stage.

10. The instant petition has no merit and the same is dismissed.”

Learned counsel for the petitioners has argued that while submitting the report under Section 173 (8) Cr.P.C. against the petitioners, CBI, in the column of result of investigation, has stated that blood sample of the petitioners and other suspected persons along with blood samples of rape victims (S & A) were sent. It is further stated in the report that during the investigation, the family members of the victims have made a statement that deceased Rashidan, before her death, disclosed names of the persons, however, the Medical Board has opined as under: -

“due to severity of head injuries and neck fractures, the deceased (Rashidan) person cannot be in a position of sound mind or capability to hold the memory and consciousness with orientation means in Compos Mentis condition and cannot be certified medically/mentally fit to give valid legal oral statement.”

Learned counsel for the petitioners has further argued that as per report of the Medical Board, Rashidan was not in a position to give the names of suspects, as stated by the victims and the witnesses before the Haryana Police. It is also argued that four persons namely Hemant Chauhan @ Dharmu @ Rahul @ Dhirender, Ayan Chauhan @ Munna @ Lucky, Vinay @ Lambu @ Tully and Jai Bhagwan @ Saitu were arrested by CBI on 30.10.2017 and they confessed their involvement in the case. It is further argued that as per report of FSL, Madhuban, DNA profiles of the petitioners was not matching with the DNA profiles of semen stains on source item No.4 (salwar of rape victim 'A') and source item No.5 i.e. mattress recovered from

the spot. It is next argued that the accused persons were already identified by the rape victims 'S' and 'A' during test identification parade conducted on 14.09.2016, however, the blood samples of these accused, which were sent to CFSL, New Delhi for comparison with the reference DNA profiles, did not match and therefore, except oral statements of the victims and their family members, no incriminating evidence has come against the petitioners.

Learned counsel for the petitioners has next argued that the petitioners were in custody since 28.08.2016 and since the investigation was not completed, they have filed the present second petition for grant of regular bail, in which interim bail was granted on 07.03.2018. It is thus argued that there is no cogent evidence against the petitioners and therefore, their interim bail may be confirmed.

Reply on behalf of CBI is on record. It is stated in this reply that the earlier bail application filed by the petitioners i.e. CRM-M-18898-2017 was dismissed by this Court by passing a detailed order dated 25.07.2017 and the grounds taken in the present second petition are similar to the grounds mentioned in the first petition. It is further stated that the petitioners were arrested by the local police on 28.08.2016 and their test identification parade was done on 14.09.2016 in Bhondsi Jail, in presence of ACJM, Nuh, in which all the four accused persons were identified by both the rape victims and thereafter, the police submitted charge sheet dated 23.11.2016 against the present petitioners and CBI filed a supplementary charge sheet on 25.01.2018 against four other persons namely Hemant @ Dharmu, Ayan @ Munna, Vinay @ Lambu and Jai Bhagwan. It is also stated that role of the petitioners is

detailed by the victims in their statements given to the local police as well as CBI.

Separate affidavit of victim-complainant is also on record.

Learned counsel for the complainant, on the basis of affidavit of victim, has given the details of the incident, which occurred on 24/25.08.2016. It is stated that in the said incident, the petitioners and other miscreants, not only looted the house and inflicted injuries to family members, but also committed murder of two family members and even committed rape of two girls i.e. victims 'S' and 'A' and victim 'A' was minor at the time of incident.

Learned counsel for the complainant has submitted that after registration of the FIR, statements of the victims and witnesses were recorded under Section 161 Cr.P.C. on 27.08.2016 and the complainant has narrated the entire incident with details, in which her maternal uncle and aunt were murdered. In the affidavit of complainant, it is stated that she was not only beaten up by the petitioners, but was also raped one by one by all the assailants and even her minor sister (victim 'A') was subjected to repeated rape by the assailants one by one. Thereafter, both the victims were locked in a room and the assailants ran away from the place after looting the jewelery and motorcycle etc. The detail of subsequent events how the victims escaped, is given in the affidavit. It is also stated in the affidavit that as per FSL report, the offence of rape is established.

Learned counsel for the complainant has further submitted that CBI has tried to dilute the charge against the petitioners, on the basis of

inconsistent DNA profiles and has wrongly concluded that nothing incriminating has come on record against the petitioners.

Learned counsel for the complainant has thus submitted that no new ground is made out and even the investigation is now complete and three other accused persons are summoned by the trial Court, who are evading their arrest. It is further argued that the complainant has filed SLP (Crl.) No.3691 of 2018 before the Hon'ble Supreme Court, challenging the order dated 07.03.2018, releasing the petitioners on interim bail and the same is pending adjudication. It is next argued that in the statements of victims recorded under Section 161 Cr.P.C., coupled with the test identification parade, the petitioners were duly identified, therefore, at this stage, they cannot be given clean chit, as they have committed heinous crime.

Learned counsel for the complainant has referred to some representations given by the victims regarding call details of accused persons, to submit that it is a matter of evidence and till statements of the victims are recorded, the petitioners are not entitled for regular bail. It is lastly argued that since the investigation is complete and the trial is likely to begin, there is every possibility that the petitioners may try to influence the eyewitnesses including the victims, who belong to very poor family.

In reply, learned counsel for the petitioners has referred to an affidavit filed by CBI before the Hon'ble Supreme Court in aforesaid SLP (Crl.) No.3691 of 2018, wherein the CBI, on the basis of report submitted under Section 173 (8) Cr.P.C., has taken a similar stand regarding the petitioners and the other accused. In Para No.5 (xi) of this affidavit, it is

stated that during the investigation, the CBI has not found any evidence against respondents No.2 to 5 (petitioners herein), whereas in the report under Section 173 (8) Cr.P.C., the CBI has specifically stated that there is an oral evidence of the victims and the witnesses against the petitioners, apart from the test identification parade, in which the victims identified the petitioners in presence of ACJM, Nuh.

Learned counsel for the respondents have relied upon **Vinay Tyagi Vs. Irshad Ali @ Deepak and others, 2013 (2) RCR (CrL.) 197**, wherein the Hon'ble Supreme Court has framed Question No.1, which reads as under: -

“Question No.1: Whether in exercise of its powers under Section 173 of the Code of Criminal Procedure, 1973 (for short, ‘the Code’), the Trial Court has the jurisdiction to ignore any one of the reports, where there are two reports by the same or different investigating agencies in furtherance of the orders of a Court? If so, to what effect?”

The Hon'ble Supreme Court, while recording answer to this question, held as under: -

“Answer to Question No.1

40.1. The court of competent jurisdiction is duty bound to consider all reports, entire records and documents submitted therewith by the Investigating Agency as its report in terms of Section 173 (2) of the Code. This Rule is subject to only the following exceptions;

- a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;*
- b) Where an order is passed by the higher courts in exercise of its extra-ordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on 'fresh investigation' or 're-investigation' or any part of it be excluded, struck off the court record and be treated as non est."*

After hearing learned counsel for the parties, I find no ground to grant regular bail to the petitioners, for the following reasons: -

- (a) The first application filed by the petitioners for grant of regular bail was dismissed by this Court vide detailed order dated 25.07.2017 and a perusal of the present petition shows that except that some further investigation was carried out by CBI, no other new ground is made out.
- (b) The allegations in the FIR are regarding committing of a serious offence of murder of two persons namely Rashidan and her husband Ibrahim and gang rape of two victims 'S' and 'A', out of which one is daughter of aforesaid two persons, who were murdered. Not only this, further allegations are that accused persons have also looted them, therefore, looking into seriousness of the allegations, merely on some scientific report,

which is yet to be proved during the course of trial, statements of the victims, one of whom is minor, recorded under Section 161 Cr.P.C. and the test identification parade conducted in presence of ACJM, Nuh, wherein both the victims have identified the petitioners as accused persons, cannot be ignored at this stage, in view of **Vinay Tyagi's** case (supra).

- (c) The interim bail was granted to the petitioners on 07.03.2018 for six weeks with the observations that the investigation is still going on; a ground, which is not available to the petitioners as on today, as the investigation is now complete and three other persons have already been summoned as additional accused, who according to counsel for CBI, have not been arrested so far and immediately thereafter, the trial will start.
- (d) In view of the fact that the eyewitnesses and victims are poor ladies, therefore, regular bail cannot be granted to the petitioners till the time, statements of the eyewitnesses and the victims is recorded by the trial Court. It is a matter of record that there are other injured victims namely Jafaruddin, Ayasha, Parvez, Naved, who suffered injuries at the hands of accused persons and their statements are also to be recorded.

Looking into seriousness of the offence and facts and circumstances of the case, I find no ground to entertain this second petition for grant of regular bail to the petitioners.

Accordingly, the present petition is dismissed.

The petitioners are directed to surrender before the trial Court forthwith.

04.03.2020
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No