
Baldeep Singh @ Monu v.State of Punjab

Present: Ms. Shivya Sehgal, Advocate,
for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab

Mr. C.L. Verma, Advocate,
for the complainant.

Case heard via video conferencing.

On 24.02.2021, the following order had been passed by this court,
reproducing therein short order earlier passed on 16.02.2021:-

“Case heard by video conferencing.

Though otherwise I would tend to agree, (for the purposes of this petition filed under the provisions of Section 439 of the Cr.P.C.), with the contention raised by the learned counsel for the petitioner, with her pointing to the MLR, as also the statement made under the provisions of Section 164 of the Cr.P.C., however, since the complainant is stated to have been summoned to testify before the trial court tomorrow, without making any comment on the actual merits of the case, adjourned to 24.02.2021.”

Today learned counsel for the petitioner has produced the order of the trial court dated 17.02.2021, in which it is stated that the report of the CFSL has been received but no prosecution witness was present and with the prosecution witnesses ordered to be summoned again on 03.03.2021.

Learned counsel for the petitioner further submits that in fact even the CFSL report shows that the DNA swabs taken did not match with the petitioner.

Learned State counsel has in fact produced the said forensic report, very clearly stating to the effect that the DNA profile recovered from the semen on the vaginal swabs of the prosecutrix, were not consistent with the DNA profile of the petitioner, though

he otherwise submits that in view of the allegations made, he does not deserve to be admitted to bail.

Adjourned to 09.03.2021, with it made clear that if the prosecutrix does not appear on that date also before the trial court to testify, then in the entire circumstances of the case, with learned counsel for the petitioner also having submitted that there were improvements made in her statement under the provisions of Section 164 of the Cr.P.C., whether the petitioner should be admitted to bail would naturally be considered by this court on that date itself.”

Thereafter on 09.03.2021, the following order had been passed (after reproducing the earlier orders):-

“Learned counsel for the petitioner submits that in fact the prosecutrix did not appear to testify either on 17.2.2021 or on 3.3.2021 and eventually appeared, and her examination-in-chief was conducted on 8.3.2021, i.e. yesterday, with her cross-examination deferred to 15.3.2021.

Adjourned to 18.3.2021, with it made absolutely clear to counsel for the complainant that if the prosecutrix does not appear on that date to get herself cross-examined, the petitioner, in the entire circumstances of the case, looking also at the photographs annexed with the petition, would be entitled to the concession of bail, he already having been in custody for about 8 months now.”

Though the instructions of learned State counsel are to the effect that the prosecutrix still remains to be cross-examined, however both learned counsel for the petitioner as also counsel for the complainant do not deny that her testimony, including her cross-examination, is complete, though Mr. Verma submits that the mother of the prosecutrix is still to be examined.

Learned counsel for the petitioner submits that in fact the prosecutrix is a 33 year old lady with children, who (as contended) has been

living away from her husband for the past more than one year, with her again reiterating today that, obviously, even the vaginal swabs did not match with the DNA profile of the petitioner.

Learned State counsel and learned counsel for the petitioner on the other hand submit that the prosecutrix having supported the case of the prosecution in her testimony, the petitioner does not deserve to be admitted to bail.

Essentially keeping in view (for the purpose of this petition alone), the fact that the DNA profile was not found to be matching, without making any comment on the actual merits of the case, the petitioner having been in custody for the past about 9 months and with the trial still not concluded and further, there being a resurgence in the ongoing pandemic, the petition is allowed and the petitioner is ordered to be admitted to bail to the satisfaction of the trial court during the pendency of the trial.

April 20, 2021
dinesh

(AMOL RATTAN SINGH)
JUDGE