

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

113

CRR-432-2022

Judgment Reserved on: 06.04.2022

Pronounced on :19.04.2022

Kulwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Narinder S. Lucky, Advocate for the petitioner.

Mr.A.S. Gill, Senior DAG, Punjab
for the respondent-State.

SUVIR SEHGAL, J.

CRM-8341-2022

Application is allowed as prayed for.

Annexures P-1 to P-5 are taken on record.

CRM-11348-2022

Application is allowed as prayed for.

Challan/Final report submitted by the investigating agency is
taken on record as Annexure P-6.

Main Case

By way of present petition filed under Section 401 of the Code of Criminal Procedure, 1973 (for short “the Code”), petitioner has approached this Court challenging order dated 01.02.2022, whereby application seeking default bail under Section 167 (2) of the Code has been dismissed in case FIR No.108 dated 14.10.2021, Annexure P-1, registered for offences under Section 376, IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for brevity –“the POCSO Act”), later on, Section 376, IPC and Section 04 of

POCSO Act were deleted and Section 376-AB and 506, IPC and Section 06, POCSO Act were added at Police Station Verowal, District Tarn Taran.

Case of the prosecution is that FIR, Annexure P-1, has been lodged by a grandmother on the allegation that her 06 years old grand-daughter had gone to the house of Kulwinder Singh, present petitioner, on 09.10.2021 at noon time. When she went to bring her back, she heard her screams and on seeing her, Kulwinder Singh ran away. She saw that her grand-daughter was bleeding from her private part. She brought her home but due to shame, she and her daughter-in-law did not disclose the incident to anyone for a few days.

Counsel for the petitioner has urged that the petitioner has been falsely framed and there is a civil dispute between the parties. He submits that the petitioner was not present at the place of alleged incident and there is an unexplained delay of five days in reporting the occurrence. Counsel contends that challan has been presented before the trial Court on 25.11.2021, which is defective as it is not accompanied by the FSL report. It is his argument that defective challan cannot be taken to have been submitted in compliance of the statutory provisions and the petitioner is entitled to grant of default bail under Section 167 (2) of the Code, which has been illegally declined vide order impugned herein.

Advance copy of the petition has been served upon the State. Upon instructions, State counsel has opposed the petition and has supported the order passed by the trial Court. He has argued that mere non-filing of the FSL report with the final report will not make the challan incomplete and the petitioner is not entitled to be released on default bail keeping in view the nature of allegations and the gravity of offence allegedly committed by him.

I have considered the respective submissions of the counsel for the parties.

The moot question which requires determination is as to whether non-submission of a report from a chemical examiner/FSL report would result in filing of an incomplete challan entitling an accused to exercise the right to seek default bail under Section 167 (2) of the Code, particularly in cases relating to sexual exploitation of women.

The question stands answered by a Full Bench of this Court in **State of Haryana vs. Mehal Singh and others, 1978 AIR (P&H) 341**. The relevant paras of the judgment are reproduced as under:-

“15. In view of the above conclusion, the accused would be on still a weaker ground in canvassing that the report, which did not include the report of the experts, such as Chemical Analyst, Serologist, Ballistic Except, Finger Print Expert etc., would not be a complete police report as envisaged in sub-section (2) of Section 173 of the Code which in terms is prepared and submitted only after the completion of the investigation. So far as the investigation part of the job of the investigating officer is concerned, it is complete if he has collected all evidence and facts that are detailed in sub-section (2) of Section 173 of the code and from the evidence thus collected he is satisfied that the case deserves to be initiated against the accused. And, even if the investigating officer had not received the report of the expert, so far as his job of collecting the evidence is concerned, that is over the moment he despatches the material for the opinion of the expert and incidentally cites him as a witness if he relies on his testimony.”

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“19. For the reasons stated, I hold that the investigation of an offence cannot be considered to be inconclusive merely for the reason that the investigating officer, when he submitted his report in terms of sub-section (2) of Section 173 of the Code to the Magistrate, still awaited the reports of the experts or by some chance, either inadvertently or by design, he failed to append to the police report such documents or the statements under Section 161 of the Code, although these were available with him when he submitted the police report to the Magistrate.”

A Coordinate Bench of this Court in CRR-782-2021 titled as **‘Rakesh alias Moni vs. State of Haryana’**, decided on 24.08.2021 has been held as under:-

“12.The petitioner has been nominated as an accused under the substantive Section of 376 IPC read with Section 6 of the POCSO Act 2012, for which the punishment could be up to ten years or beyond. The challan presented is complete in all respects as against Section 376 IPC and Sections 328, 363, 366-A, 506 IPC, 420, 201 IPC, as statement of the victim itself is sufficient to convict a person.....”

Adverting to the facts of the present case, final report submitted by the investigating agency is accompanied by the statements of the prosecutrix, her mother, birth certificate, clothes, medical reports of the accused and the victim and other incriminating material, though insofar as FSL is concerned, it has been mentioned that it has yet not been received. It is not disputed that the challan has been presented within the stipulated period against the petitioner for offence under Section 376-AB, 506, IPC and Section 6 of the POCSO Act. For an offence of sexual assault, the final report would be complete on the statement of the prosecutrix under Sections 161 and 164 of the

Code and FSL report can be used only to corroborate the version of the prosecution. On the basis of the challan, Annexure P-6, filed by the Investigating Agency, the Court can take cognizance of the offence. In view of the above, non-filing of FSL report with the challan does not make the challan an incomplete one.

The argument of the counsel regarding the falsity of the accusation, the alleged delay in lodging of the FIR or his plea of alibi, are not germane to the adjudication of the application seeking grant of default bail.

In the light of the above discussion, this Court is of the view that there is no illegality or perversity in the order passed by the trial Court.

Finding no merit in the petition, it is hereby dismissed.

Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case or the defence of the petitioner.

Judgment Reserved on 06.04.2022
Pronounced on-19.04.2022
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No