

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

CRM-M-12606-2022
Date of Decision: 12.09.2022

..... Petitioner

Versus

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Gurpreet Singh, Advocate,
for the petitioner.

Mr. Sandeep, Additional Advocate General, Punjab,
for the respondent assisted by
Mr. Madan Singh, ASI, P.S. City Hoshiarpur.

RAJBIR SEHRAWAT, J. (ORAL)

This is the second petition filed under Section 439 Cr.P.C for grant of bail pending trial to the petitioner in case FIR No.117 dated 26.07.2018, registered under Sections 363, 366-A and 34 of the Indian Penal Code and Section 6 of the POCSO Act (added later on) as per challan, at Police Station City Hoshiarpur, District Hoshiarpur.

On 21.07.2022, this Court has passed the following order:-

“Custody certificate filed by learned State counsel in this Court is taken on record. As per the custody certificate, the petitioner is also involved in several other cases.

Counsel for the petitioner submits that the petitioner is on bail in all other cases except the present FIR.

Adjourned to 25.08.2022 to enable counsel for the petitioner to produce the orders of bail in cases other than the FIR involved in the present case.

The State is also directed to examine the prosecutrix on the next date fixed before the trial Court.

Still further, State will file an affidavit as to why prosecution witnesses are not being produced despite the fact that about 04 (four) years have passed since the registration of the FIR.”

Today, in compliance of the previous order, learned State counsel has filed affidavit of Sh. Palwinder Singh, Deputy Superintendent of Police, Sub-Division City, District Hoshiarpur, in Court today, which is taken on record.

It has been brought to the notice of this Court that prosecutrix has been partly examined in examination-in-chief. No other witness has been examined by the prosecution. Thereafter, the Public Prosecutor had expressed his inclination to move an application under Section 319 Cr.P.C. so as to array an additional accused.

The petitioner has already been in custody for more than four years in this case. Despite that, not even a single witness has been examined by the prosecution so far. The liberty of the petitioner cannot be jeopardized by casualness of the prosecution, particularly, when the allegations are that the prosecutrix had gone with the petitioner and remained with him for full one week; during which she visited several places and stayed in Hotels. Even if the petitioner is guilty, that has to be so held by a court of law by conducting Trial in right earnest and due promptitude. However, prosecution has abjectly failed in doing its duty of conducting prosecution proceedings appropriately. At this stage, the petitioner is not required for any investigation purpose. He cannot be forced to suffer incarceration without any effective proceedings being conducted against him by the Court.

In view of the above, but without commenting upon the merits of the case, the present petition is allowed. It is ordered that the petitioner be released on bail pending trial on his furnishing bail bonds/sureties to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

Since the Public Prosecutor and the Investigating Officer of the case have not performed their duties with due promptitude, therefore, they deserve to be put under some coercive conditions so as to compel them to complete the process of the trial as soon as possible. Accordingly, it is ordered that the payment of salary to the Public Prosecutor, who is conducting this case, as well as the salary of the Investigating Officer of the case, shall remain stayed till all the prosecution witnesses are examined before the Court in the case.

The Director (Prosecution), Punjab and the Senior Superintendent of Police, Hoshiarpur, are directed to send report qua stopping of the salaries of these two officers on or before 15.10.2022.

The case be put up on 15.10.2022 for the limited purpose of ensuring compliance.

(RAJBIR SEHRAWAT)
JUDGE

12.09.2022
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No