

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

**118**

**CRR No.1606 of 2022  
Date of decision:29.10.2022**

**'S'**

**... Petitioner**

**Vs.**

**State of Punjab and another**

**... Respondents**

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

**Present:- Mr. Sohrab Dhanda, Advocate with  
Mr. A.S.Manaise, Advocate  
for the petitioner.**

**Mr. Mohit Chaudhary, AAG, Punjab.**

**SUVIR SEHGAL, J. (Oral)**

By way of present petition filed under Section 401 of the Code of Criminal Procedure, 1973 (for short “the Code”), petitioner has challenged order dated 04.05.2022, whereby, application, Annexure P-4 moved by the prosecution for summoning Mandeep Kaur, respondent No.2 as an additional accused in case bearing FIR No.9 dated 31.01.2018 (Annexure P-1) lodged for offences under Section 376 IPC, Sections 3 and 4 of Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”), at P.S.Rangar Nangal, Police District Batala, District Gurdaspur, has been declined by the learned Additional Sessions Judge, Gurdaspur.

Facts leading to filing of the present petition are that FIR (Annexure P-1) has been registered on the basis of a complaint dated

03.10.2016 submitted by the petitioner-prosecutrix on the allegation that Jujhar Singh, who used to frequent her native village, came in contact with her and they became friends. His sister, Mandeep Kaur, used to talk to her on telephone. On 21.03.2016, after calling her on phone, Jujhar Singh took her to a hotel room near Amritsar and despite her resistance, raped her. She did not reveal the incident to anyone. On the threat of circulating the video of the incident recorded by him, Jujhar Singh repeatedly had forcible physical relationship with her. He also made her talk to his sister. A compromise was arrived at between the parties and it was decided that Jujhar Singh would get married to her in December, 2017, but he did not do so. During enquiry, it was found that Mandeep Kaur was innocent and as the prosecutrix was about 17½ year of age and Jujhar Singh had sexually assaulted her on the allurements of marriage, offence under the POCSO Act was added. After the framing of charge against Jujhar Singh, prosecutrix has been examined and during her examination-in-chief, an application, Annexure P-4 has been moved for summoning Mandeep Kaur, as an additional accused, which has been rejected by order impugned herein.

While referring to the allegations levelled in the FIR, as well as the deposition of the prosecutrix, counsel for the petitioner has contended that despite specific allegation against Mandeep Kaur, the Trial Court has erred in rejecting the application.

Advance copy of the petition has been served upon the State.

Upon instructions from ASI Mahinderpal and by making a reference to the final report submitted under Section 173 of the Code, State

counsel has supported the order under challenge.

I have heard counsel for the parties.

It is the settled legal position that power which has been conferred on the Court under Section 319 of the Code, is a discretionary and extra ordinary power which is to be exercised very sparingly only when strong and cogent evidence has been led against a person, who is sought to be summoned. The Court must be satisfied from the evidence collected during the enquiry or in the trial that the person sought to be summoned as an additional accused has committed an offence for which he deserves to be tried alongwith already arraigned accused. Supreme Court in **Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92** and **Manjeet Singh Vs. State of Haryana and others 2021 SCC Online 632** has laid down the parameters and the circumstances when the power can be exercised.

An examination of the allegation levelled by the prosecutrix in the complaint shows that there is no allegation whatsoever against Mandeep Kaur. The only reference to Mandeep Kaur in the FIR is that she is the sister of Jujhar Singh and she used to talk with the prosecutrix on phone. In the statement recorded under Section 164 of the Code, Annexure P-2, the prosecutrix has stated that Mandeep Kaur used to say that she wants that the prosecutrix should become her *Bhabhi* (sister-in-law). It has been further stated in the statement, Annexure P-2 that the prosecutrix revealed the incident of 21.03.2016 to Mandeep Kaur but she assured her that there is

nothing to worry as Jujhar Singh would get married to her. However, in her deposition, Annexure P-3, the prosecutrix has stated that on 21.03.2016, it was Mandeep Kaur, who had called her on phone and forced her to accompany them on a trip, but when she reached the hotel, she found that Mandeep Kaur was not present there. It is evident that there is a consistent change in the version of the incident by the prosecutrix to enmesh the sister of Jujhar Singh in the criminal case.

From the facts discussed above, it is clear that parameters laid down by the Supreme Court in both the judgments are not fulfilled and the order passed by the Trial Court declining the application for summoning Mandeep Kaur does not call for any interference. There is no illegality or perversity in the order passed by the Trial Court and it does not call for any interference.

Petition is dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case. Trial Court shall proceed and conclude the trial on the basis of evidence led before it, uninfluenced by any observation made hereinabove.

October 29, 2022

savita

(SUVIR SEHGAL)  
JUDGE

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|---------------------------|-----|
| Whether Speaking/Reasoned | Yes |
| Whether Reportable        | Yes |