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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: November 10, 2022*

+ **CRL.M.C. 6694/2019**
MS. JXXXX

..... Petitioner

Through: Mr. Gaurav Sharma, Advocate.

versus

THE STATE & ANR

..... Respondents

Through: Mr. Raghuvinder Varma, APP for the
State with SI Vandana, P.S. Hari
Nagar.

Mr. Hemant Singh and Ms. Ruchika
Sharma, Advocates along with the
respondent no. 2 in person.

CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present petition is filed under section 482 Cr.P.C for expunging/setting aside direction given in order dated 26.09.2019 passed by the Court of Shri S.P.S. Laler (Pilot Court), ASJ, Tis Hazari Courts, Delhi and the following prayers were also made:

(i) **Set aside the direction in order dated 26.09.2019 passed by Sh. S.P.S. Laler, Ld. ASJ, Tis Hazari Courts, Delhi, thereby directing the IO to get the lie detector test of the prosecutrix done, in the interest of justice;**

(ii) **Any other relief(s) which this hon'ble court may deem fit and proper as per the facts and circumstances of the present case;**

2. The counsel appearing on behalf of the respondent no. 2 submitted written submission and is directed to place the written submissions on record within three days.

3. The present FIR bearing no. 336/2019 was registered under sections 376D/366/342/506/34 IPC at P.S. Hari Nagar on the basis of complaint made by the respondent no. 2 pertaining to the incident happened on 01.06.2019. After investigation the chargesheet has already been filed under sections 376D/34 IPC at P.S. Hari Nagar and the trial is stated to be pending in the Court of Ms. Riya Dua, ASJ, District West, Tis Hazari Courts. In the chargesheet the respondent no. 2 alongwith his brother was implicated.

4. The respondent no. 2 filed the bail application bearing no. 3570 titled as State V Shivanu Kumar @ Shivanu Mehta and the Court of Shri Saurabh Pratap Singh Laler, Additional Sessions Judge (Pilot Court) West District, Tis Hazari Courts, Delhi vide order dated 26.09.2019 admitted the respondent no. 2 on bail on furnishing personal bond in the sum of rupees 25,000/- with two sureties of the like amount subject to the satisfaction of the concerned Court and the following conditions were also laid down while granting the bail.

1. **The accused shall attend the court on each and every date without fail.**
2. **The accused shall not change his address without prior intimation to the learned Trial Court.**
3. **The accused shall comply with the conditions of the bond executed by him.**
4. **The accused shall not leave the country without permission of the court concerned.**

The IO is also directed to get lie detection test of accused conducted as it is the only mode of proving his innocence by the accused before the trial is concluded, while taking precautions as per the judgment titled Selvi V State of Karnataka 2010(7) SCC 263. The IO shall also subject the complainant to lie detection test as per law.

5. The counsel appearing on behalf of the petitioner stated that the direction given by the concerned Court at the time of grant of bail vide order dated 26.09.2019 to conduct the lie detector test of the accused i.e the respondent no. 2 by the Investigating Officer was not justified. It was further directed to the concerned I.O. to conduct the lie detection test of the petitioner i.e. the complainant as per law. The counsel appearing on behalf of the petitioner argued that the petitioner who is the complainant cannot be subjected to the lie detection test as per law. He prayed that the said directions given by the concerned Court vide order dated 26.09.2019 be set aside.

6. The Additional Public Prosecutor appearing on behalf of the respondent no. 1/State stated that the I.O. never applied during the investigation before the concerned Court for the conduction of lie detection test either of the petitioner or of the respondent no. 2. The investigation has already been completed and the chargesheet has already been filed.

7. The counsel appearing on behalf of the respondent no. 2 during the course of arguments referred the bail order dated 26.09.2019 and argued that the said directions for the conduction of the lie detection test of the complainant was rightly given by the concerned Court vide order dated 26.09.2019. He further argued and submitted that the respondent no. 2 has been falsely implicated in the present case at the instance of Sarwan Yadav against whom the respondent no. 2 already filed an application under section 156 (3) Cr.P.C which was allowed by the Court of Sessions Judge and accordingly, the FIR bearing no. 336/2019 was got registered on 18.07.2019 against Sarwan Yadav. The respondent no. 2 is having clean antecedents and

is falsely implicated in the present case.

8. It is apparent that the investigation has already been completed and after completion of investigation the chargesheet was filed before the concerned Court. The trial has already been commenced. The concerned I.O. never applied for the conducting of lie detection test of either of the concerned parties under section 173(8) Cr.P.C and the same was never a part of the investigation.

9. The concerned Court was not justified in giving the directions for the conduction of lie detection test of either of the petitioner or the respondent no. 2 vide order dated 26.09.2019.

10. The order dated 26.09.2019 is set aside being contrary to the law in respect of following directions:-

After considering all facts, the Investigating Officer is directed to get lie detection test of accused conducted as it is the only mode of proving his innocence by the accused before the trial is concluded, while taking precautions as per the judgment titled as Selvi V State of Karnataka 2010(7) SCC 263. The IO shall also subject the complainant to lie detection test as per law.

11. The present petition alongwith pending applications, if any stands disposed of.

(SUDHIR KUMAR JAIN)
JUDGE

NOVEMBER 10, 2022/sk/m