

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

130

CRM-M-9684-2023

Date of Decision : 23.02.2023

Khum Khum @ Khus Bhargav

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Gulzar Mohammad, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition under Section 482 Cr.P.C. is seeking quashing of order dated 03.02.2023 (Annexure P-6) whereby Additional Sessions Judge, Jalandhar has dismissed application of petitioner under Section 311 Cr.P.C. seeking recalling of PW2 and PW3 i.e. victim and her mother.

An FIR No.142 dated 25.07.2017, under Section 376 of IPC and Section 12 of POCSO Act, at Police Station Division No.3, District Police Commissionerate Jalandhar came to be registered against the petitioner.

The police, after completing investigation, filed its report under Section 173 Cr.P.C. The trial Court framed charges under Section 4 of POCSO Act apart from other Sections of IPC. The prosecution moved an application under Section 216 Cr.P.C. seeking amendment of charge. The prosecution pleaded that as per statement of prosecutrix, the offence committed by accused falls under Section 6 of POCSO Act instead of

Section 4 of POCSO Act. The trial Court vide order dated 16.12.2022 amended the charge and Section 4 of POCSO Act was replaced by Section 6 of POCSO Act.

The petitioner preferred an application under Section 311 Cr.P.C. recalling of prosecutrix and her mother for further cross-examination. The application of the petitioner came up for consideration before Sessions Court which vide impugned order dated 03.02.2023 has dismissed holding that there is amendment of charge from Section 4 of POCSO Act to Section 6 of POCSO Act and the petitioner/accused has already cross-examined both the witnesses, thus, there is no reason to allow application and permit further cross-examination.

Notice of motion.

Mr. Amish Sharma, Asstt. A.G., Punjab, accepts notice on behalf of respondent No. 1-State and submits that the FIR was registered in 2017 and trial is pending before trial Court since 15.07.2020, therefore, any order of this Court is likely to delay the trial.

To avoid delay, I do not deem it appropriate to issue notice to prosecutrix especially when the prosecution stands represented by learned Advocate General Office.

I have heard arguments of learned counsel for the parties and perused the record.

The FIR was registered in 2017 and *challan* came to be presented in 2020. The charges came to be amended vide order dated 16.12.2022. As per amended charge, the petitioner has committed repeated rape upon prosecutrix. The charge under Section 6 of POCSO Act is altogether different from charge under Section 4 of POCSO Act which is

evident from the fact that an accused for commission of offence punishable under Section 6 of POCSO Act is liable to graver sentence than the offence punishable under Section 4 of POCSO Act. The charge has been amended in December' 2022, thus, it would be unfair and unjustified to hold and conclude that there would be delay in the conclusion of trial because of act or omission of the petitioner. The petitioner has every right to cross-examine the prosecutrix and other witnesses who have deposed against him. On account of amendment of charge, the petitioner in terms of criminal jurisprudence as well as principles of natural justice has right to further cross-examine the prosecutrix (PW2) as well as her mother (PW3).

In view of above facts and circumstances, the present petition is allowed and impugned order is set aside. The trial Court is directed to recall prosecutrix (PW2) and her mother (PW3) for further cross-examination.

It is made clear that the petitioner shall not seek adjournment and would cross-examine prosecutrix and her mother as and when they will appear for the said purpose.

(JAGMOHAN BANSAL)
JUDGE

23.02.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>