

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

249

CRR-485-2022

Date of Decision: 25.05.2023

Surpreet Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

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

Mr. Pankaj Khullar, AAG, Punjab.

ALOK JAIN, J. (Oral)

The present petition raises challenge to the order dated 26.11.2021 passed by the learned Additional District and Sessions Judge, Hoshiarpur, whereby an application for release of the petitioner under the provisions of Section 330 read with Section 328 and 329 Code of Criminal Procedure (for short Cr.P.C.) on bail to the custody of his parents was declined.

2. The brief facts of the case as narrated by the counsel for the petitioner are that the petitioner was nominated as an accused in FIR No.265 dated 21.10.2020 registered at Police Station Tanda, District, Hoshiarpur for the offences punishable under Sections 302, 376-D, 201 and 34 of IPC. Thereafter, on 28.10.2020, the investigating agency deleted Section 376-D of the Indian Penal Code and added Section 376-AB of the Indian Penal Code in the present case and also adding Section 366-A of the Indian Penal code. Furthermore, vide DDR No.32 dated 29.10.2020, the investigating agency added Section 3(2)(v) of the SC and ST (Prevention of Atrocities) Act, 1989 and the investigating agency completed its

investigation and presented its final report (Challan) dated 29.10.2020 before the concerned Court on 30.10.2020 leveling serious allegations of having committed rape upon a minor prosecutrix of around 07 years, and thereafter committing her murder and then setting her dead body afire to eliminate the evidence.

3. During the trial, the petitioner moved an application under Section 328 and 329 Cr.P.C. to hold inquiry and get a report to the effect that the accused Surpreet Singh being lunatic/unsound mind, cannot face trial as he is unable and incapable of making his defence. It was submitted that the accused was suffering from serious disease, namely, Schizophrenia and his medical condition was not fit to contest the trial.

4. It is submitted by learned counsel for the petitioner that the physical condition of the petitioner is so bad that he is not even able to consume his meal on his own much less the medicine and relied upon the detailed report from the Department of Psychiatric, Guru Nanak Dev Hospital and Medical College, Amritsar, where the petitioner was under treatment from the doctors.

5. Learned Court below vide order dated 13.09.2021(Annexure P-6) dismissed the application of the petitioner on the ground that the petitioner was receiving the appropriate treatment, while being in custody and was under supervision of two Doctors, a Counselor and a Psychiatric Social worker. However, when the petitioner approached this Court, the State was directed to get the petitioner mentally evaluated before a panel of doctors at PGIMER, Chandigarh and to file the report vide order dated 15.03.2022 passed by this Court. Thereafter, a report dated 25.04.2022 was filed by the Medical Board constituted by the PGIMER, which opined that

the petitioner is suffering from Schizophrenia and there was evidence of **Cognitive Deficit**.

6. Learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court of India in case titled as "***Prakash Nayi @ Sen Vs. State of Goa***", 2023(1)RCR(Crl.) 823, wherein the Hon'ble Supreme Court has held that Schizophrenia is certainly a overpowering mental illness.

7. To substantiate his averments of grant of bail to the petitioner rather he improvises his prayer by submitting that the bail is only a nomenclature and rather the custody of the petitioner should be handed over to the parents under whom the petitioner could be treated.

8. Heard learned counsel for the petitioner, at length and perused the record.

9. Before advertng to the merits of the case, it is imperative to reproduce the provision of Sections 328, 329 and 330 of Cr.P.C. , which reads as under:

"328. Procedure in case of accused being lunatic.

(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.

(3) If such Magistrate is of opinion that the person referred to in sub- section (1) is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

329. Procedure in case of person of unsound mind tried before Court.

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.

330. Release of lunatic pending investigation or trial.

(1) Whenever a person is found, under section 328 or section 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government: Provided that no order for the detention of the accused in a lunatic asylum shall be

made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912)".

10. A perusal of the above provisions clearly demonstrates that the legislature in its wisdom had incorporated Chapter XXV of the Code, which ensures such a person, his liberty which is much different from what liberty means for a person, who does not fall under this class. The parameters set forth under Section 330(1) Cr.P.C. have to be construed positively and once there is ample medical record to demonstrate that the accused is of unsound mind, the bail to the custody of his parents has to flow.

11. The Hon'ble Supreme Court of India in the judgment "**Kanhiya Vs. State of UP**", 2018 (8) ADJ 400 has held as under:

"64. This Court in view what has been said hereinbefore is of opinion that the jurisdiction under Section 330, under Chapter XXV of the Code is generically different from that under Section 439. The scope, content, purpose and the object of bail contemplated under Sections 439 & 330 are generically different and mutually exclusive. The remedy of an accused of unsound mind is to make an application under Section 330 to the Court entitled by law in the first instance to entertain the same on merits, be it the Magistrate or the Court, the Court Invariably and almost certainly being the Sessions Judge in context of Section 330 of the Code. In the event of failure in the Court of first instance whether it be the Magistrate or the Sessions Judge, the remedy to an accused of unsound mind whose application under Section 330 of the Code has failed would be to invoke the supervisory Jurisdiction of Superior Courts under Sections 397, 397/401, 482 of the Code or if so advised, under Article 227 of the Constitution, but not by way of an application Invoking Jurisdiction under Section 439 of

the Code. Thus, no application under Section 439 of the Code would be maintainable in the case of an accused of unsound mind whose application under Section 330 has been rejected by the Magistrate or the Court in the first instance.

12. In fact the Hon'ble Supreme Court of India in the judgment of "**Sarju Khan v. State of Jharkhand**", 2004 (13)SCC 460 had ordered the release of lunatic pending investigation or trial and the procedure under Chapter XXV of the Cr.P.C had to be followed.

13. The Hon'ble Supreme Court of India in the judgment "**Sobran Singh v.State of Chhattishgarh**", 2002(2)CCR 357, "**Nanhu@Ghanshyam Patel v. State of M.P.**",2019 CriLJ2017, "**Dimple@Dimpu@Gurcharan v. State of Punjab**", 2009(1)R.C.R.(Criminal) 602 and "**Amar Singh v. State of Maharashtra**", 2006(2) R.C.R. (Criminal) 888 has consistently held the parameters for release of lunatic pending investigation or trial.

14. In light of the above, settled principles of law as discussed, coupled with the Medical Report dated 25.04.2022 of the Medical Board constituted by the PGIMER, Chandigarh, the present petition deserves to be allowed and the petitioner be released on bail by concerned Illaqa Magistrate by imposing following conditions:

- a) A friend or relative (parent, guardian, etc.) undertakes to obtain regular treatment from the nearest medical facility for such an accused;*
- b) A friend or relative (parent, guardian, etc.) undertakes to prevent such an accused from doing injury to himself or to any other person;*
- c) The mental condition of such an accused is regularly monitored to keep track of his medical condition in case he ceases to be of unsound mind at a subsequent stage to take the necessary steps to follow for resumption of trial as per Section 331 Cr.P.C.*

- d) *In addition to the abovesaid conditions, the parents of the petitioner are ready and willing to take any other necessary steps toward ensuring proper compliance of the provisions and undertake to abide by any terms as may be imposed by this Court in given facts of the case.*
- e) *Since by reason of unsoundness of mind, the accused is incapable of making his defence nor is he able to understand the Court proceedings, he be released in custody of his parents.*

15. With the above directions, the petitioner is directed to be released on bail and handed over to the custody of his parents, who are further directed to submit his medical report after every six months to the trial Court, which shall extend his bail after considering the same and the petitioner shall be medically examined by the Board to be constituted by the PGIMER, Chandigarh once in every year.

16. The Medical Board shall be constituted on the joint request of the prosecution agency as well as the parents of the accused. The previous report of the Medical Board constituted by the PGIMER shall also be considered while submitting the subsequent medical report.

17. However, it is made clear that, in case, the parents of the petitioner fail to submit the Medical Report after every six months and also fail to get the petitioner examined from the Medical Board once in a year, the prosecution agency shall be at liberty to approach the trial Court for cancellation of bail.

(ALOK JAIN)
JUDGE

25.05.2023

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Whether speaking/reasoned:- Yes
Whether Reportable:- Yes