

Sr.No.105

2023:PHHC:146232

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

CRR-2654-2023(O&M)

Date of decision:17.11.2023

Aryan Chillar @ Aryan

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: Hon'ble Ms. Justice Harpreet Kaur Jeewan

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

Harpreet Kaur Jeewan, J.(Oral)

1. Prayer in the present revision petition is for setting aside the order dated 25.10.2023 passed by the Learned Additional Sessions Judge (Exclusive Court), Jhajjar in FIR No.70 dated 21.08.2022 registered under Sections 376/511, 506 IPC, Section 8 and 12 POCSO Act, 2012 whereby the application of the petitioner-accused for re-examination of two mobile phones, allegedly belonging to the victim i.e. Samsung Ex.P5/1 and realme belonging to the accused Ex.P5/4 from National Forensic Science University, Sector 9, Gandhi Nagar, Gujarat has been declined.

2. Learned counsel for the petitioner *inter alia* contends that both the mobile phones were examined and some data was retrieved by FSL Madhuban and was stored in CD (Compact Disc). However, the expert of the said laboratory could not retrieve/extract instagram chats from any of the mobile phones. In the cross-examination of PW-5 Gourav Veer, Senior Scientific Officer, (Cyber) Forensic Science Laboratory, Madhuban Karnal, has admitted that despite his efforts, he could not retrieve instagram chats and he further stated that instagram chats can be retrieved but it depends on some technical factor and the App instagram has to be installed in the mobile phone which was not installed in mobile

phone of realme. However, it was installed in the mobile phone of Samsung. It is further contended that the retrieval of the said chats would show the true facts, since the petitioner is facing trial under Section 376 IPC and Sections 8 and 12 of POCSO Act.

3. Notice of motion.

4. On advance copy, Mr. Amrik Singh Narwal, DAG, Haryana, who is present in Court, accepts notice on behalf of the State.

5. Learned State counsel submits that the expert has already been examined as witness and there is no need for sending the phone for re-examination, as such, the application filed by the petitioner was rightly dismissed by the trial court.

6. Keeping in view the facts and circumstances of the present case, I am of the considered opinion that the recovery of the mobile phones is not disputed which is reflected in Recovery Memo (Annexure P-2). The scientific expert has also testified that instagram chats can be retrieved but could not retrieve for want of technical factors. The chat is going to elucidate the controversy between the parties, as such would facilitate the decision on merits, hence petitioner has a right to bring on record the said evidence as his defence.

7. Consequently, the present revision petition is allowed. the impugned order dated 25.10.2023 passed by the Learned Additional Sessions Judge (Exclusive Court), Jhajjar is set aside and the petitioner is granted the permission to send the mobile phones to the said lab at his own expenses through the investigating agency.

17th November, 2023

Shivani Kaushik

Whether speaking/reasoned

Whether Reportable

[HARPREET KAUR JEEWAN]

JUDGE

Yes/No

Yes/No